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Vol. III 402 909
Sup. Ct
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 281

WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,

vs.

CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.

No. 282

WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,

vs.

CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 25, 1940.

CERTIORARI GRANTED JULY 25, 1940.

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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.

IN THE MATTER OF GRANADA APARTMENTS, INC.,
A CORPORATION, DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,
Petitioners,
vs.

CITY NATIONAL BANK & TRUST COMPANY OF
CHICAGO, ETC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fourth day of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-third.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank & Trust Company of
Chicago, etc., et al.,
Appellants,

6986 vs.
Weightstill Woods, Court Trustee, et al.,
Appellees.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank & Trust Company of
Chicago, etc., et al.,
Appellants,

7080 vs.
Weightstill Woods, Court Trustee, et al.,
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

And on, to-wit: On the eleventh day of June, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, a petition for leave to appeal which said petition for leave to appeal is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit,

No. 6986.

In the Matter of
 Granada Apartments, Inc.,
 Debtor,

City National Bank and Trust Company of
 Chicago, individually and as Successor
 Trustee, etc., et al.,

Appellants,

vs.
 Weightstill Woods, Court Trustee, Granada
 Apartments, Inc., a corporation, Granada
 Apartments Hotel Corporation, a corporation,
 Florence Newman, Edwin Rosenberg,
 Charles Cunningham, as Receiver, Maurice
 M. Kraft, Stephen L. Ingersoll, as Agent
 for Cordelia L. Ingersoll, as Executrix of
 the Estate of Stephen A. Ingersoll, De-
 ceased, Edla Christiansen, Emil W. Chris-
 tiansen, G. R. Curnock, Reconstruction Fin-
 ance Corporation, a corporation, Indem-
 nity Insurance Company of North
 America, a corporation, E. W. Wenstrand,
 Continental Illinois National Bank and
 Trust Company of Chicago, a corporation,
 Charles H. Albers, as Receiver, Harris
 Trust and Savings Bank, a corporation,
 I. Gordon, J. Rose, Sam Harris, M. Ber-
 nard Greenberg,

Appellees.

Petition for appeal from
 order entered in Case
 No. 65811 in the District
 Court of the United
 States for the Northern
 District of Illinois, East-
 ern Division, denying
 fees and expenses to
 Bondholders Protective
 Committee, Trustee under
 First Mortgage Indenture and to Defrees,
 Buckingham, Jones &
 Hoffman, as their attor-
 neys, and sustaining and
 allowing counterclaim by
 Weightstill Woods, as
 Court Trustee.

Honorable
 John P. Barnes,
 Judge Presiding.

PETITION FOR LEAVE TO APPEAL.

To the Honorable Judges of the United States Circuit
 Court of Appeals for the Seventh Circuit:

Petitioners, City National Bank and Trust Company of
 Chicago, individually and as Successor Trustee under
 trust indenture securing Granada Apartments First Mort-
 gage Bonds, Albert J. Peterson, Lewis W. Riddle, William
 G. Sturm and E. A. Kilmer, members of the Protective
 Committee acting under Deposit Agreement for the hold-
 ers of said bonds, and George T. Buckingham, Donald
 Defrees, Don Kenneth Jones, Matthew Mills, Stephen E.
 Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus
 Thomson, co-partners doing business as Defrees, Bucking-

ham, Jones & Hoffman, respectfully pray leave to appeal from an order entered in the United States District Court for the Northern District of Illinois, Eastern Division, by the Honorable John P. Barnes, one of the judges thereof, on the 2nd day of May, 1939, wholly disallowing and dismissing for want of equity paragraphs 5 and thereafter of Claim No. 9 of said City National Bank and Trust Company of Chicago against Debtor, and disallowing and dismissing for want of equity all petitions and claims for expenses and allowances by said City National Bank and Trust Company of Chicago, Bondholders Committee and their attorneys, Petitioners herein.

Appeal from the order complained of has been perfected by filing with the Clerk of the United States District Court on June 1st, 1939, a notice of appeal. Petitioners had believed from a reading of the Bankruptcy Act, as amended, that an appeal from any order entered in a bankruptcy proceeding, including an order making or refusing to make fee allowances, should be taken as of right under Section 24(a), except when less than Five Hundred Dollars (\$500.00) was involved. Petitioners were convinced that their construction of the Act was correct when they read the decision of the Circuit Court of Appeals for the Second Circuit in the case of *London v. O'Dougherty*, 102 Fed. (2d), 524, rendered March 13, 1939, specifically holding that under the Bankruptcy Act as amended appeals, even from fee allowances, were to be taken as of right under Section 24(a). It was not until June 8th that Petitioners discovered that the Circuit Court of Appeals for this Circuit in the case of *In re Albert Dickinson & Company, Inc.*, decided May 22, 1939 and reported in Commerce Clearing House Bankruptcy Law Service June 6, 1939, had held that an appeal from a fee allowance under the Chandler Act must be by petition for leave to appeal.

As the order from which appeal is prayed in this petition was entered May 2, 1939, and as written notice of the entry of the order was not given to the aggrieved party, as provided in Section 25 of the Chandler Act, Petitioners had forty days from the entry of the order within which to file a petition for leave to appeal, that is, until June 12.

A great many questions are raised by the appeal. In fact, due to the number of petitions, claims and counter-claims presented which were all consolidated for hearing

and determined by the one order, this is, in effect, seven or eight appeals rolled into one. The transcript of the proceedings alone is some 2200 pages in length.

Under the circumstances, the court can readily see that it has been a difficult task to prepare a petition, assignment of errors and brief which adequately present all the questions involved. However, as the matter will be fully presented by the appeal which has already been perfected by filing notice of appeal in the District Court and as the petition for leave to appeal is now presented to this court merely for the purpose of conforming to the technical requirements of the Act as interpreted by this court, we submit that the petition should be allowed in order that all the matters presented, including the question of fee allowances, may be properly heard and determined when the full record is before the court.

Summary of Facts.

Petitioners represent that the following is a summary statement of the facts upon which the order complained of was entered:

Involuntary proceedings for corporate reorganization of Granada Apartments, Inc., under Section 77B instituted at Danville, Illinois, were transferred to Chicago and consolidated with voluntary proceedings there pending.

By order entered May 17, 1937, motions for the approval of the petitions were allowed and Weightstill Woods was appointed temporary Trustee. The appointment was never made permanent, but he was continued as temporary Trustee by court orders entered from time to time.

Principal property of the Debtor is a five-story furnished apartment hotel at 525 Arlington Place, Chicago, Illinois, containing kitchennette apartments and is encumbered by a first mortgage trust deed securing outstanding unsubordinated bonds in the principal sum of \$485,500 and subordinated bonds in the principal amount of \$25,000.

Petitioner, City National Bank and Trust Company of Chicago, was and is the Successor Trustee under the First Mortgage Trust Deed, and Petitioners, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer are members of the Protective Committee for the protection of holders of First Mortgage Bonds acting under Deposit Agreement dated April 25, 1933, which at the time of the confirmation of the Plan hereinafter mentioned had on

deposit almost two-thirds of the outstanding unsubordinated bonds. Petitioners, George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, were and are the attorneys for Petitioner, City National Bank and Trust Company of Chicago, as Successor Trustee aforesaid, and for members of the Bondholders Committee aforesaid.

On August 7, 1933, Central Republic Trust Company, the then Trustee under the First Mortgage Indenture, filed a cross-bill in the Superior Court of Cook County, Illinois, to foreclose the first mortgage trust deed. Thereafter, on March 22, 1934, Central Republic Trust Company took possession of the property and operated it as Trustee in possession until January 3, 1935, on which date the City National Bank and Trust Company of Chicago, one of the Petitioners herein, as Successor Trustee under the trust indenture, by appointment of the State Court in the foreclosure proceeding, took possession of the said property and operated it as Trustee in possession. Receiver of Central Republic Trust Company presented to the State Court its final report and account covering its operation of said property, which was approved, and the Central Republic Trust Company and its Receiver, after paying the balance on hand to the City National Bank and Trust Company of Chicago, as Successor Trustee, were forever discharged from any and all liability under and in connection with said trust indenture and the administration of said trust.

Thereafter City National Bank and Trust Company of Chicago, as the Successor Trustee, accounted to the defendants in the State Court foreclosure proceeding for all rents, issues, income and profits collected and disbursed by it as Trustee in possession for the period from January 3, 1935 to September 30, 1936, and the balance on hand in the amount of One Thousand Six Hundred Eight Dollars and Fifty-six Cents (\$1,608.56), as shown by said accounting, was applied by the decree of sale entered in said cause on the indebtedness found due City National Bank and Trust Company, as Trustee aforesaid. The debtor and the First Mortgage Bondholders were parties to the State Court proceeding and raised no objections to the accounting.

Thereafter, City National Bank and Trust Company of

Chicago continued to operate the said property as Trustee in possession until it surrendered possession thereof to the Court Trustee in the bankruptcy proceeding on May 20, 1937 immediately upon his qualifying.

Thereafter City National Bank and Trust Company of Chicago filed its Claim No. 9 based on the decree of sale which was entered in the State Court foreclosure proceeding more than four (4) months before the filing of the petitions in bankruptcy. The claim so filed was for its expenses for court reporter's and stenographer's fees in the State Court foreclosure proceeding in the amount of Thirty-nine Dollars and Ninety Cents (\$39.90) and for its Trustee's fees and those of its counsel allowed in and by the said decree as a lien on the property prior to the lien of the bondholders in the respective amounts of Two Thousand Five Hundred Sixty Dollars (\$2,560) and Eight Thousand Two Hundred Fifty Dollars (\$8,250), the latter amount being the amount allowed in said decree for services of the Trustee's solicitors rendered to the date of the entry of the foreclosure decree and it did not include compensation for any services that were to be rendered by said attorneys subsequent to the entry of said decree.

Subsequently such proceedings were had that the Plan of Reorganization formulated and presented by the Committee was confirmed on July 14, 1937. Under the Plan a new corporation was to be formed, all of the stock of which was to be trustee with three stock trustees, the Court subsequently appointing Weightstill Woods, Clarence Boord and William Haight.

On August 30, 1937 City National Bank and Trust Company of Chicago filed its report and account in the 77B proceedings covering, among other things, its operation as Trustee in possession of the property for the period from September 30, 1936 to May 20, 1937, a copy of which said report and account is attached to this petition marked "Exhibit A" and made a part hereof.

On September 9, 1937, Weightstill Woods, Federal Trustee, filed to the report and account of the City National Bank and Trust Company and to its Claim No. 9 what he designated as "Answer and Counter Claim by Federal Trustee to Petition Filed August 30, 1937 by City National Bank and Trust Company for Approval of Accounts; and Objections by Federal Trustee to Claims by City National and its Counsel for Fees and Expenses in Superior Court and in this Court." A copy of the so-called Answer and

Counter Claim is hereto attached marked "Exhibit B" and made a part of this petition by reference.

On September 14, 1937 the petition for fees and expenses of the Bondholders Committee was filed, detailing the services of the Committee in connection with the 77B proceedings and the Plan of Reorganization and asking for an allowance of such amounts as the Court might find reasonable for the payment of expenses incurred by the Committee and City National Bank and Trust Company for services rendered and personnel and facilities furnished Committee, and for services rendered as Depositary and for reimbursement of "out-of-pocket" expenses as shown by an exhibit attached to the said petition. The petition requested reasonable compensation, but specified no definite amount, but on the hearing before the Special Master to whom the petition was referred to take the evidence, a fee of Three Thousand Two Hundred Dollars (\$3,200) was requested for Depositary services, Ten Thousand Dollars (\$10,000) was requested for services to reimburse City National Bank and Trust Company for furnishing facilities and personnel and Two Thousand Three Hundred Eighty-five Dollars and Twenty-one Cents (\$2,385.21) was requested for reimbursement for "out-of-pocket" expenses.

On the same date, September 14, 1937, Defrees, Buckingham, Jones & Hoffman filed their petition for allowance to them of fees as counsel for the Bondholders Committee. The petition detailed services which they had performed for the Committee in connection with the 77B proceedings and the Plan and services to be rendered in connection therewith and asked for reasonable compensation therefor but specified no definite amount.

At the hearing on the fee petition of counsel before the Special Master, Mr. O'Brien stated that in his opinion reasonable compensation for all legal services rendered as counsel for the Indenture Trustee in the State Court proceeding and as counsel for the Indenture Trustee in the Bankruptcy proceeding and as counsel for the Committee would be not less than a total of Thirty Thousand Dollars (\$30,000), which amount would include the Eight Thousand Five Hundred Dollars (\$8,500) allowed by the decree in the State Court proceeding for services there rendered and set forth in Claim No. 9 filed by the Indenture Trustee in the Bankruptcy proceeding. He further stated that his firm was willing to waive its right to stand on the claim and submit the whole matter of its fees *de novo* to the Court. He also stated that the request of Thirty

Thousand Dollars (\$30,000) should be reduced by the sum of Five Thousand Five Hundred Dollars (\$5,500) which constituted payments theretofore made to his firm for other legal services rendered in other matters in connection with the Granada property.

On September 18, 1937 the answer of City National Bank and Trust Company, as Trustee, was filed to the counterclaim of Weightstill Woods, as Trustee in Bankruptcy. A copy of the answer is hereto annexed marked "Exhibit C" and made a part of this petition.

Hearings on the report and account of City National Bank and Trust Company, as Trustee, the answer, counterclaim and objections of the Court Trustee thereto and the answer of City National Bank and Trust Company, as Trustee, to the said counterclaim extended over a period of approximately a month and on October 12, 1937 the Court entered an order taking the matter under advisement and granting leave to the Court Trustee and to the City National Bank and Trust Company, as Trustee, to file briefs and submit findings of fact and conclusions of law within fifteen (15) days and thirty (30) days, respectively.

Thereafter on October 21, 1937 an order was entered on the motion of the Court Trustee ordering the petitions for allowance of fees and expenses to the Bondholders Committee and to Defrees, Buckingham, Jones & Hoffman to be consolidated with the accounting proceedings hereinbefore mentioned, and further directing that all evidence that had been taken before the Special Master on said petitions should be considered as a part of the hearing which had been had before the Court in connection with said accounting proceedings.

Thereafter the Court Trustee presented to the Court his proposed findings of fact and conclusions of law, to which City National Bank and Trust Company of Chicago, the Protective Committee and Defrees, Buckingham, Jones & Hoffman presented to the Court and filed suggestions and objections and their proposed findings of fact and conclusions of law.

On July 14, 1938 Judge Barnes rendered an oral opinion, a copy of which is hereto attached marked "Exhibit D" and made a part of this petition, and directed the Court Trustee to prepare and on notice present findings of fact and conclusions of law in accordance with his oral opinion and a decree consistent therewith.

On May 2, 1939 the Court made, approved and filed of

record the findings of fact and conclusions of law so presented by the Court Trustee and entered the order from which this appeal is prayed. A copy of said findings and of said order are hereto attached marked respectively Exhibits "E" and "F" and made a part of this petition.

Wherefore, your Petitioners pray that they may be allowed to appeal from the said order of May 2, 1939, to this Honorable Court and that citations be issued directed to the said Weightstill Woods, Court Trustee, Granada Apartments, Inc., a corporation, Granada Apartments Hotel Corporation, a corporation, Florence Newman, Edwin Rosenberg, Charles Cunningham, as Receiver, Maurice M. Kraft, Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Edla Christiansen, Emil W. Christiansen, G. R. Curnock, Reconstruction Finance Corporation, a corporation, Indemnity Insurance Company of North America, a corporation, E. W. Wenstrand, Continental Illinois National Bank and Trust Company of Chicago, a corporation, Charles H. Albers, as Receiver, Harris Trust and Savings Bank, a corporation, I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg, commanding them to appear before the said United States Circuit Court of Appeals for the Seventh Circuit to do and receive what may appertain to justice in the premises and that a transcript of the record of proceedings in said case on which said order was entered, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And Petitioners will ever pray, etc.

City National Bank and Trust Company of
Chicago, as Successor Trustee,
By Arthur T. Leonard,

Its Vice President.

Albert J. Peterson, Lewis W. Riddle, W. G.
Sturm and E. A. Kilmer, Members of the
Protective Committee, as aforesaid,
By W. G. Sturm,

*Member of said Committee and its duly
authorized agent in this behalf.*

George T. Buckingham, Donald Defrees,
Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman,

By Vincent O'Brien,

A Partner.

State of Illinois } ss.
County of Cook }

Arthur T. Leonard, being first duly sworn, on oath deposes and says that he is a Vice President of City National Bank and Trust Company of Chicago, one of the Petitioners herein, and its duly authorized agent in this behalf, that he has read the above and foregoing petition subscribed by the said City National Bank and Trust Company of Chicago, knows the contents thereof and that the same is true in substance and in fact.

Arthur T. Leonard.

Subscribed and sworn to before me this 12th day of June, A. D. 1939.

(Seal)

Berthel W. Peterson,
Notary Public.

State of Illinois } ss.
County of Cook }

W. G. Sturm, being first duly sworn, on oath deposes and says that he is a member of the Bondholders Committee, one of the Petitioners herein, and the duly authorized agent in this behalf, that he has read the above and foregoing petition by him on their behalf subscribed, knows the contents thereof and that the same is true in substance and in fact.

W. G. Sturm.

Subscribed and sworn to before me this 12th day of June, A. D. 1939.

(Seal)

Berthel W. Peterson,
Notary Public.

State of Illinois } ss.
County of Cook }

Vincent O'Brien, being first duly sworn, on oath deposes and says that he is a member of the partnership of Defrees, Buckingham, Jones & Hoffman and their duly authorized agent in this behalf, that he has read the above and foregoing petition by him on their behalf subscribed, knows the contents thereof and that the same is true in substance and in fact.

Vincent O'Brien,

Subscribed and sworn to before me this 12th day of June, A. D. 1939.

(Seal)

Ruth Burns,
Notary Public.

Endorsed: Filed June 12, 1939. Frederick G. Campbell, Clerk.

(Attached to said petition for leave to appeal is Exhibit A, being Report and Account of City National Bank and Trust Company of Chicago, As Trustee, which said Report and Account is not copied here as the same appears on pages 111 to 126 inclusive, of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit B, being Answer and counterclaim by Federal Trustee to petition of City National Bank & Trust Co. for approval of accounts, etc., and Suggestions (objections) by Federal Trustee to surcharge and falsify accounts and deny all claim by City National Bank & Trust Co., its Committee and their counsel and petition by Federal Trustee for general relief against respondent, which are not copied here as the same appear on pages 126 to 139 inclusive of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit C, being Answer of City National Bank and Trust Company of Chicago, as Trustee, to the Counterclaim of Weightstill Woods, Trustee in Bankruptcy, which is not copied here as the same appears on pages 165 to 169 inclusive of the printed record in this cause certified herewith under a separate certificate.)

852 *Reference to Assignment of Errors.*

(Also attached to said petition for leave to appeal is Exhibit D, being decision rendered July 14, 1938, by Judge John P. Barnes, which is not copied here as the same appears on pages 761 to 768 inclusive of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit E, being Findings of Fact and Conclusions of Law after full hearings in Open Court which is not copied here as the same appears on pages 769 to 793 inclusive of the printed record in this cause certified herewith under a separate certificate.)

(Also attached to said petition for leave to appeal is Exhibit F, being Decree entered May 2, 1939, which is not copied here as the same appears on pages 794 and 795 of the printed record in this cause certified herewith under a separate certificate.)

And on the same day, to-wit: On the twelfth day of June, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, the assignment of errors, which are not copied here as the same appear on pages 817 to 831 inclusive in the printed record in this cause certified herewith under a separate certificate.

And on the same day, to-wit: On the twelfth day of June, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, an appearance for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6986. October Term, 19_____

City National Bank and Trust Company of Chicago, individually and as Successor Trustee, etc, *et al.*,

vs.

Weightstill Woods, Court Trustee, *et al.*

The Clerk will enter my appearance as counsel for the Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 S. La Salle Street,
Chicago, Illinois.

Endorsed: Filed June 12, 1939. Frederick G. Campbell,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.In the Matter of
Granada Apartments, Inc., } No. 6986.
Debtor. }ANSWER TO PETITION BY CITY NATIONAL BANK
AND TRUST COMPANY AND OTHERS, FILED IN
THIS COURT JUNE 12, FOR THIS COURT TO AL-
LOW AN APPEAL.

Weightstill Woods as Court Trustee in these proceedings, shows that on June 1, 1939, all of said petitioners City National Bank and Trust Company and others, filed their notice of appeal in the District Court, and on June 8 filed designation of points and praecipe for record in said Court, for an appeal to this Court, in this same matter, and from the same decree dated May 2, 1939, appearing by the same attorneys.

(1) It follows that all power to take an appeal was exercised and exhausted by said petitioners before their application was filed in this Court.

(2) Also the forty days allowed by statute had expired on June 11, 1939, before petition was filed in this court,

(3) Also this application is duplication, vexation, surplusage and tends to encumber and confuse the record.

(4) Also there seems to be now no power by rule or statute for this Court to grant such an appeal.

Wherefore your Court Trustee requests that the prayer of said petition filed here June 12, 1939, by City National Bank and Trust Company and others, to this Court for an appeal be denied.

Respectfully submitted,
Weightstill Woods as Court Trustee.

Weightstill Woods being sworn states that he has prepared the foregoing answer, that he knows the contents thereof to be a true statement of the records made in the District Court at Chicago, and that the facts stated in said answer are true.

Weightstill Woods.
Weightstill Woods:

Answer to Petition.

853b

Subscribed and sworn to before me this June 17, 1939.

Edwin D. Lasker,
Notary Public.

(Seal)

Received copy of foregoing answer June 17, 1939.

Mort D. and Frank Goldberg,
11 South La Salle Street,
By Frank Goldberg.

Vincent O'Brien and Associates,
105 South La Salle Street,
By Vincent O'Brien and Associates,
W. S.

Endorsed: Filed June 17, 1939. Frederick G. Campbell,
Clerk.

And afterwards, to-wit: On the twenty-second day of
June, 1939, an order allowing appeal was entered in cause
No. 6986, which said order is not copied here as the same
appears on page 832 of the printed record in this cause
certified herewith under a separate certificate.

And afterwards, to-wit: On the first day of July, 1939, the following further proceedings were had and entered of record, to-wit:

Saturday, July 1, 1939.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

In the Matter of:

Granada Apartments, Inc.,
Debtor.

City National Bank & Trust Company of Chicago, etc., *et al.*,
Appellants,

6986 *vs.*
Weightstill Woods, Court Trustee,
et al.,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the appeal bond filed this day in this cause be, and it is hereby, approved.

And on the same day, to-wit: On the first day of July, 1939, there was filed in the office of the Clerk of this Court an appeal bond, which said appeal bond is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Granada Apartments, Inc.,
a corporation, Debtor.

City National Bank and Trust
Company of Chicago, individually
and as Successor Trustee,
etc., et al.

vs.

Weightstill Woods, Court Trustee,
et al.,

Appellees.

No. 6986.

APPEAL BOND.

Know All Men by These Presents, that we, City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933 with respect to said Bonds, George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, as principals, and Aetna Casualty & Surety Company, a corporation, as surety, are firmly bound unto Weightstill Woods, Court Trustee, Granada Apartments, Inc., a corporation, Granada Apartments Hotel Corporation, a corporation, Florence Newman, Edwin Rosenberg, Charles Cunningham, as Receiver, Maurice M. Kraft, Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Edla Christiansen, Emil W. Christiansen, G. R. Curnock, Reconstruction Finance Corporation, a corporation, Indemnity Insurance Company of North

Appeal Bond.

America, a corporation, E. W. Wenstrand, Continental Illinois National Bank and Trust Company of Chicago, a corporation, Charles H. Albers, as Receiver, Harris Trust and Savings Bank, a corporation, I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg, in the amount of Two Hundred Fifty Dollars (\$250) for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Signed with our seals and dated this 30th day of June, A. D. 1939.

Whereas, an order was entered in the above entitled proceedings in the United States Circuit Court of Appeals for the Seventh Circuit on the 22nd day of June, 1939, allowing an appeal to said United States Circuit Court of Appeals for the Seventh Circuit from a certain order entered May 2, 1939 in the District Court of the United States for the Northern District of Illinois, Eastern Division, against the said City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman; and

Whereas, in said order allowing said appeal it was required that Appellants give a bond on appeal in the sum of Two Hundred Fifty Dollars (\$250),

Now, Therefore, the condition of this obligation is such that if the above named persons shall prosecute their appeal to effect and answer all costs awarded if they fail to make the said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

City National Bank and Trust Company of Chicago, Individually and as Successor Trustee under Indenture securing Granada Apartments First Mortgage Bonds,

By Arthur T. Leonard,
Vice President.

Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer,

Members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933 with respect to said bonds,

By W. Sturm,
Hereunto duly authorized.

Defrees, Buckingham, Jones & Hoffman,

By Matthew Mills,
A Partner.

Aetna Casualty and Surety Company, a corporation,

By Joseph I. Johnson,
Joseph I. Johnson.
Agent and Attorney-in-fact.

(Seal)

Approved:

J. Earl Major,
Judge.

State of Illinois } ss.
County of Cook }

I, E. B. Rechtoris, a Notary Public in and for said County and State, do hereby certify that * * * Resident Vice-President, and * * * Resident Assistant Secretary, Joseph I. Johnson, Attorney in fact, of The Aetna Casualty and Surety Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered said instrument, for and on behalf of The Aetna Casualty and Surety Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 30th day of June, A. D. 1939.

E. B. Rechtoris,
Notary Public.

(Seal)

My Commission Expires March 17th, 1940.

The Aetna Casualty and Surety Company
Hartford, Connecticut.

Certificate of Authority of Attorney(s)-in-Fact.

Know All Men by these Presents, That the Aetna Casualty and Surety Company, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint Joseph I. Johnson of Chicago, Illinois, its true and lawful Attorney(s), with full power and authority hereby conferred to sign, execute and acknowledge, for The Aetna Casualty and Surety Company, as surety, by his sole signature and act any and all bonds, undertakings and other writings obligatory in the nature of a bond, and to bind The Aetna Casualty and Surety Company thereby as fully and to the same extent as if the same were signed by the duly authorized officers of The Aetna Casualty and Surety Company, and all the acts of said Attorney(s), pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following provisions of the by-laws of the Company which provisions are now in full force and effect and are the only applicable provisions of said by-laws.

Article 4.

Section 8. The President, any Vice-President, or any Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him.

Section 10. Any bond, recognizance, contract of in-

demnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President or a Vice-President or by a Resident Vice-President, pursuant to the power prescribed in the certificate of authority of such Resident Vice-president, and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Resident Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power prescribed in his or their certificate or certificates of authority.

In Witness Whereof, The Aetna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereunto affixed, this 30th day of June, A. D. 1939.

The Aetna Casualty and Surety
Company,

By A. B. Palmerton,

Secretary.

(Seal)

State of Connecticut, } ss:
County of Hartford, }

On this 30th day of June, A. D. 1939, before me personally came A. B. Palmerton, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is Secretary of The Aetna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the by-laws of said corporation and that he signed his name thereto by like authority.

Certificate No. 186401.

N. M. Potter,
Notary Public.

(Seal)

My Commission Expires Jan. 31, 1941.

Endorsed: Filed July 1, 1939. Frederick G. Campbell,
Clerk.

And afterwards, to-wit: On the eleventh day of July, 1939, there was filed in the office of the Clerk of this Court a citation, in cause No. 6986, which said citation is not copied here as the same appears on pages 834 to 837 inclusive of the printed record in this cause certified herewith under a separate certificate.

And afterwards, to-wit: On the nineteenth day of July, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, a short record, which said short record consists of an order of June 20, 1939, continuing cause for entry of decree, which said order is not copied here as the same appears on page 815 of the printed record of causes No. 6986 and No. 7060, the order or decree entered May 2, 1939, which is not copied here as the same appears on pages 794 and 795 of the printed in causes No. 6986 and No. 7060, and of a praecipe for record filed on June 29, 1939, and a praecipe for short record filed on July 18, 1939, and a certificate of Clerk of District Court, which are as follows:

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of

Granada Apartments, Inc., a
corporation,
Debtor.

City National Bank and Trust
Company of Chicago, individu-
ally and as Successor Trustee,
etc., et al.,

Appellants,

vs.

Weightstill Woods, Court Trus-
tee, et al.,

Appellees.

In Proceedings for
the Reorganization
of a Corporation.
No. 65811.

PRAECIPE FOR RECORD.

To the Clerk of the District Court of the United States
for the Northern District of Illinois, Eastern Division:

You Are Hereby Requested to make a transcript of the
record of the proceedings had in the District Court of
the United States for the Northern District of Illinois,
Eastern Division, in the above entitled cause, to be filed
in the United States Circuit Court of Appeals for the Sev-
enth Circuit pursuant to appeal heretofore allowed on
June 22, 1939, by the United States Circuit Court of Ap-
peals for the Seventh Circuit, and to include in such
transcript of record the following, to wit:

1. Placita.
2. Involuntary petition of creditors against Granada
Apartments, Inc. filed April 19, 1937 at Danville, Illinois,
in cause their No. 3008-D and later here numbered 65957.
3. Answer of Debtor to involuntary petition filed at
Danville, Illinois, in cause their No. 3008-D.
4. Voluntary petition of Granada Apartments, Inc.
filed April 23, 1937 at Chicago, Illinois.
5. Finding and order of court on creditors' petition and
motion to intervene filed at Danville, Illinois, in cause their
No. 3008-D.
6. Order entered May 11, 1937 approving voluntary

and involuntary petitions as properly filed and consolidating voluntary and involuntary petitions and appointing temporary Trustee.

7. Special and limited appearance of City National Bank and Trust Company of Chicago, as Successor Trustee, filed May 17, 1937.

8. Petition of City National Bank and Trust Company of Chicago filed May 17, 1937 pursuant to special and limited appearance.

9. Subpoena and return filed May 19, 1937.

10. Order entered May 20, 1937 approving bond of Weightstill Woods, temporary Trustee, in amount of \$20,000.

11. Intervening petition of Bondholders Protective Committee filed May 24, 1937.

12. Order entered May 24, 1937 granting leave to Committee to file intervening petition and order that notice of all motions and hearings be served on Defrees, Buckingham, Jones & Hoffman and leave to Committee to file Plan instanter and objections to Plan to be filed with Clerk on or before June 23, 1937, creditors classified and claims to be filed with Referee Chindblom on or before June 23, 1937 and objections on or before July 3, 1937 and cause set for July 9, 1937 for consideration of claims, proposal and consideration of confirmation of Plan and amendments and petitions for fees and expenses.

13. Plan of Reorganization of Debtor filed May 24, 1937.

14. Proof of claim of City National Bank and Trust Company of Chicago, as Trustee, filed June 23, 1937 with Referee Chindblom pursuant to order entered May 24, 1937.

15. Proof of claim of Bondholders Protective Committee filed June 23, 1937 with Referee Chindblom pursuant to order entered May 24, 1937.

16. Objections of Weightstill Woods, as Trustee, to various claims filed with Referee Chindblom pursuant to order entered May 24, 1937.

17. Report of Carl R. Chindblom, Referee in Bankruptcy, as Special Master, filed on July 8, 1937 on claims and objections thereto and acceptance of Plan of Reorganization.

18. Order entered July 14, 1937 on allowance or disallowance of claims pursuant to order entered May 24, 1937, including allowance of claim of City National Bank and

Trust Company of Chicago, as Trustee, with respect to First Mortgage Six Per Cent Real Estate Gold Bonds of Debtor and claim of Bondholders Protective Committee.

19. Order entered July 12, 1937 continuing Weightstill Woods as temporary Trustee of Debtor until further order of court.

20. Acceptance of Plan by Committee filed July 12, 1937.

21. Order entered July 14, 1937, Plan modified and amended; objections overruled and Plan, as modified and amended, approved and confirmed and petitions for fees to be filed September 14, 1937 and continued to September 14, 1937 for hearing on petitions for fees and expenses and on final decree.

22. Order entered July 15, 1937 amending order of confirmation.

23. Order entered July 17, 1937 on claim of Ingersoll and Wenstrand.

24. Order entered August 30, 1937 granting leave to City National Bank and Trust Company of Chicago, as Trustee, to file report and objections to be filed in 10 days and hearing set for September 15, 1937.

25. Report and account of City National Bank and Trust Company of Chicago, as Trustee, filed August 30 1937.

26. Answer and counterclaim filed September 9, 1937 by Weightstill Woods, as Trustee.

27. Objections filed September 9, 1937 by Weightstill Woods, as Trustee.

28. Order entered September 14, 1937 granting leave to City National Bank and Trust Company of Chicago, as Trustee, to file amendment to proof of claim.

29. Amendment to proof of claim filed September 14, 1937 by City National Bank and Trust Company of Chicago, as Trustee.

30. Order entered September 14, 1937 granting leave to Weightstill Woods, as Trustee, to file petition to show inter-hotel services and rule on any party in interest desiring to file an answer thereto to file such answer within 5 days and hearing on petition and answer, if any, set for September 21, 1937.

31. Order entered September 14, 1937 ruling City National Bank and Trust Company of Chicago, as Trustee, to file such answer as it may desire to answer and counter-claim of Court Trustee, and hearing on report and account of City National Bank and Trust Company of Chicago and

answer and counterclaim thereon set for September 21, 1937.

32. Petition filed September 14, 1937 by Weightstill Woods, Trustee, to have determined the compensation for services re Arlington Hotel.

33. Answer of Arlington, Inc. filed September 18, 1937 to petition of Weightstill Woods, as Trustee, filed September 14, 1937.

34. Petition of Defrees, Buckingham, Jones & Hoffmann filed September 14, 1937 for allowance of fees.

35. Petition of Bondholders Protective Committee filed September 14, 1937 for allowance of fees and expenses.

36. Answer of City National Bank and Trust Company of Chicago, as Trustee, filed September 18, 1937, to counterclaim of Weightstill Woods, as Trustee.

37. Order of reference entered October 14, 1937, to Carl R. Chindblom, Special Master, to receive evidence of any applicant for fees, to reduce said evidence to writing and to report the same to the court and hearing on petitions for fees continued to October 21, 1937 and for entry of final decree.

38. Report of Carl R. Chindblom, Referee in Bankruptcy, as Special Master, filed October 21, 1937 on taking of evidence on application for fees and expenses.

39. Petition of Protective Committee filed October 13, 1937 for approval of form of documents to consummate Plan.

40. Order entered October 22, 1937 on petition of Bondholders Protective Committee amending and approving documents and designating original Trustees and authorizing Committee and counsel to consummate Plan.

41. Order entered October 12, 1937 taking report and account of City National Bank and Trust Company of Chicago, as Trustee, and answer and counterclaim of Weightstill Woods, as Trustee, under advisement, and Weightstill Woods, as Trustee, to file brief and submit findings of fact and conclusions of law within 15 days, and City National Bank and Trust Company of Chicago, as Trustee, to file brief and submit findings of fact and conclusions of law within 30 days, and Weightstill Woods, as Trustee, to reply within 40 days.

42. Order entered October 21, 1937 consolidating certain hearings relating to City National Bank and Trust Company of Chicago, as Trustee.

43. Suggestions and objections of City National Bank and Trust Company of Chicago, Charles S. Tuttle, et al.,

and Defrees, Buckingham, Jones & Hoffman to the decree, findings of fact and conclusions of law drafted by the Court Trustee and presented to the Court September 24, 1938, said suggestions and objections being filed September 30, 1938.

44. Memorandum of court relating to fees and expenses filed October 25, 1937.

45. Transcript of proceedings and Exhibits (Vols. I, II and III) filed December 30, 1937.

46. Order entered December 30, 1937 identifying and approving certificate of evidence and transcript of proceedings in matter of report and account of City National Bank and Trust Company of Chicago, Trustee, and answer and counterclaim thereto consisting of three Volumes (Vols. I, II and III).

47. Motion of Weightstill Woods, as Trustee, on December 30, 1937 for rule on Protective Committee to record releases and proceed for clearing title.

48. Petition of Continental Illinois National Bank and Trust Company of Chicago filed January 20, 1938 for order directing Granada Apartments Hotel Corporation to comply with provisions of Plan.

49. Order entered January 24, 1938 ordering Granada Apartments Hotel Corporation to pay to Continental Illinois National Bank and Trust Company of Chicago the indebtedness evidenced by certain additional sales contract.

50. Petition of Continental Illinois National Bank and Trust Company of Chicago filed July 14, 1938 for order requiring Weightstill Woods, as Trustee in Granada Apartments Hotel Corporation, to show cause.

51. Statement of receipts and disbursements May 17, 1937 to March 31, 1938 filed April 2, 1938.

52. Preliminary final report of Weightstill Woods, as Trustee, and petition for instructions as to further duties filed May 24, 1938.

53. Order entered May 24, 1938 reducing bond of Weightstill Woods, as Trustee, to \$5,000 and that Weightstill Woods, as Trustee, be continued as Trustee until after disposition of all pending litigation to which he is a party.

54. Transcript of proceedings filed July 15, 1938.

55. Findings and order entered May 2, 1939.

56. Order entered June 20, 1939 continuing date for entry of final decree to November 16, 1939.

57. Petition of City National Bank and Trust Company of Chicago, individually and as Trustee, et al., for

order relating to transmission of original transcript of proceedings and Exhibits to Clerk of the Circuit Court of Appeals, for the Seventh Circuit, and order entered with respect thereto.

58. Consent of City National Bank and Trust Company of Chicago, as Trustee, filed herein June 7, 1939 (with attached copy of order dismissing for want of equity the petition of Weightstill Woods, Court Trustee, filed herein September 14, 1937, against The Arlington, Inc.) provided that such order shall have been entered by the Court.

59. Praeclipe for record and proof of service thereof.

60. Certificate of Clerk.

Said transcript of record is to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, on or before the 22nd day of July, 1939.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,

*Attorneys for City National Bank
and Trust Company of Chicago,
individually and as Successor
Trustee under indenture securing
Granada Apartments First Mort-
gage Bonds; Albert J. Peterson,
Lewis W. Riddle, William G.
Sturm and E. A. Kilmer, members
of the Protective Committee acting
under the Deposit Agreement
dated April 25, 1933, with respect
to said Bonds; and George T.
Buckingham, Donald Defrees, Don
Kenneth Jones, Matthew Mills,
Stephen E. Hurley, Kenneth M.
Fiske, Vincent O'Brien, and Metel-
lus Thomson, co-partners doing
business as Defrees, Buckingham,
Jones & Hoffman, Appellants.*

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 South La Salle Street,
Chicago, Illinois,
Attorneys for Appellants.

Service of the above and foregoing Praeclipe accepted
and acknowledged this 28th day of June, 1939.

Weightstill Woods,

B. W. D. Wollesen,

Attorney Pro Se.

Mort D. and Frank Goldberg,
Attorneys for Granada Apartments,
Inc.

David H. Greenberg,
Attorney for Florence Newman.

Samuel Micon,
Attorney for Edwin Rosenberg and
Charles Cunningham, Receiver.

David H. Kraft,
Attorney for Maurice M. Kraft,

Loucks & Hennings,
Attorneys for Stephen L. Ingersoll,
as Agent for Cordelia L. Ingersoll,
as Executrix of the Estate of
Stephen A. Ingersoll, Deceased.

Cassels, Potter & Bentley,
Attorneys for Edla and Emil W.
Christiansen.

R. W. Proctor,
Attorney for G. R. Curnock.

Lee Walker,
Attorney for Reconstruction Finance
Corporation.

Dent, Weichelt & Hampton,
Attorneys for Indemnity Insurance
Company of North America.

Leo L. Donahoe (E. S.)
Attorney for E. W. Wenstrand.

Mayer, Meyer, Austrian &
Platt,
Attorneys for Continental Illinois
National Bank and Trust Company
of Chicago.

William J. Flaherty,
Attorney for Charles H. Albers,
Receiver.

Chapman and Cutler,
Attorneys for Harris Trust and Sav-
ings Bank.

David H. Greenberg,
*Attorney for I. Gordon, J. Rose, Sam
 Harris and M. Bernard Greenberg.*
 Weightstill Woods,
 By W. D. Wollesen,
*Treasurer of Granada Apartments
 Hotel Corporation.*

And on, to wit, the 18th day of July, A. D. 1939, came the City National Bank & Trust Company of Chicago, et al. by their attorneys and filed in the Clerk's office of said Court their certain Praeipe for Record in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

In the Matter of
Granada Apartments, Inc., a
corporation,
Debtor.

City National Bank and Trust
 Company of Chicago, individually and as Successor Trustee,
 etc., et al.,

Appellants.

vs.
 Weightstill Woods, Court Trustee, et al.,

Appellees.

In Proceedings for
 the Reorganization
 of a Corporation.
 No. 65811.

PRAECIPE FOR RECORD.

To the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

You Are Hereby Requested to make a transcript of the record of the proceedings had in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the above entitled cause, to be filed in the United States Circuit Corrt of Appeals for the Seventh

Circuit pursuant to appeal heretofore allowed on June 22, 1939, by the United States Circuit Court of Appeals for the Seventh Circuit, and to include in such transcript of record the following, to wit:

1. Placita.
2. Order entered June 20, 1939, continuing date for entry of final decree to November 16, 1939.
3. Order entered May 2, 1939.
4. Praeclipe of record and proof of service thereof.
5. Certificate of Clerk.

Said transcript of record to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit, and to be forthwith filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, at Chicago, Illinois.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
*Attorneys for City National Bank
and Trust Company of Chicago,
individually and as Successor
Trustee under indenture securing
Granada Apartments First Mort-
gage Bonds; Albert J. Peterson,
Lewis W. Riddle, William G.
Sturm and E. A. Kilmer, members
of the Protective Committee act-
ing under the Deposit Agreement
dated April 25, 1933, with respect
to said Bonds; and George T.
Buckingham, Donald Defrees, Don
Kenneth Jones, Matthew Mills,
Stephen E. Hurley, Kenneth M.
Fiske, Vincent O'Brien and Metel-
lus Thomson, co-partners doing
business as Defrees, Buckingham,
Jones & Hoffman, Appellants.*

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for Appellants,
105 South La Salle Street,
Chicago, Illinois.

Northern District of Illinois,
Eastern Division,

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praeclipe filed in this Court in the cause entitled In the Matter of Granada Apartments, Inc., a corporation, *Debtor*, No. 65811, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 18th day of July, A. D. 1939.

(Seal)

Hoyt King,
Clerk.

And afterwards, to-wit: On the twentieth day of July, 1939, a motion to extend the time to file transcript of record in cause No. 6986, which said motion to extend the time to file transcript is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

In the Matter of
Granada Apartments, Inc.,
a corporation,

Debtor.

City National Bank and Trust
Company of Chicago, individually
and as Successor Trustee,
etc., *et al.*,

Appellants,

No. 6986.

vs.
Weightstill Woods, Court Trustee,
et al.,

Appellees.

MOTION.

Now come City National Bank and Trust Company of Chicago, individually and as Successor Trustee under in-

denture securing Granada Apartments First Mortgage Bonds. Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, Members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants in the above entitled cause, by Vincent O'Brien, John Merrill Baker and Tracy Wilson Buckingham, their counsel, and move the Court for an order extending the time for filing the transcript of record in these proceedings with the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, to and including September 16, 1939, and in support of said motion said Appellants represent:

1. That an appeal has been allowed by this Court (No. 6986) from an order entered May 2, 1939 in the District Court of the United States for the Northern District of Illinois, Eastern Division.

2. That an appeal has also been taken to this Court from the same order.

3. That in the appeal taken pursuant to notice of appeal a designation of record and an additional designation of record have been filed with the Clerk of the District Court, and an order has been entered in the District Court extending the time for filing the record with the Clerk of this Court to and including August 19, 1939.

4. That a praecipe for record has been filed with the Clerk of the District Court in connection with this appeal (No. 6986) in this Court.

5. That the documents to be included in the record to be filed with the Clerk of this Court in the appeal taken to this Court pursuant to the notice of appeal will include all documents included in the praecipe for record filed pursuant to appeal allowed in this Court (No. 6986) with the exception of certain documents which have heretofore been filed with the Clerk of this Court in this appeal (No. 6986).

6. That it is contemplated that, upon the filing of the record with the Clerk of this Court in connection with the appeal taken from the District Court pursuant to notice of appeal, a motion will be made in this Court for an order to consolidate this appeal (No. 6986) and the appeal taken from the District Court and to permit the rec-

Motion to Extend Time.

ord so to be filed in the appeal taken to this Court pursuant to the notice of appeal, together with the documents now filed with the Clerk of this Court in this appeal (No. 6986), to stand as the record in both appeals.

7. That in order to permit the making of the motion in this Court it is necessary that the record with respect to the appeal taken to this Court pursuant to the notice of appeal be filed with the Clerk of this Court, the time for filing of which has been extended as hereinabove set forth to August 19, 1939.

8. That the complete transcript of record, unless this motion is granted in this appeal (No. 6986), must be filed with the Clerk of this Court on or prior to July 22, 1939,—a physical impossibility and an unnecessary duplication.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,

*Attorneys for City National Bank
and Trust Company of Chicago,
individually and as Successor
Trustee under indenture securing
Granada Apartments First
Mortgage Bonds; Albert J.
Peterson, Lewis W. Riddle, Wil-
liam G. Sturm and E. A. Kilmer,
members of the Protective Com-
mittee acting under the Deposit
Agreement dated April 25, 1933,
with respect to said Bonds; and
George T. Buckingham, Donald
Defrees, Don Kenneth Jones,
Matthew Mills, Stephen E. Hur-
ley, Kenneth M. Fiske, Vincent
O'Brien and Metellus Thomson,
co-partners doing business as
Defrees, Buckingham, Jones &
Hoffman, Appellants.*

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,

*Attorneys for Petitioners,
105 South La Salle Street,
Chicago, Illinois.*

Endorsed: Filed July 20, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-first day of July, 1939, the following further proceedings were had and entered of record, to-wit:

Friday, July 21, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust
Company of Chicago, etc., *et al.*,
Appellants,
6986 *vs.*
Weightstill Woods, Court Trustee,
et al., *Appellees.*

Appeal from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

On motion of counsel for appellants, it is ordered that the time for filing the transcript of record in this cause be, and it is hereby, extended to and including September 16, 1939.

And afterwards, to-wit: On the twenty-first day of August, 1939, there was filed in the office of the Clerk of this Court, in cause No. 7060, an appearance for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 7060. October Term, 19.....

Re: Granada,

Debtor.

City National,

vs.

Woods, etc.

The Clerk will enter my appearance as counsel for the Appellee, Court trustee.

Weightstill Woods,
77 West Washington,
Chicago.

Endorsed: Filed August 21, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-fifth day of August, 1939, there was filed in the office of the Clerk of this Court, in cause No. 7060, an appearance for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7060. October Term, 1939.

In Re: Granada Apts.,

Debtor.

City National Bk. & Tr. Co.,

vs.

Weightstill Woods,

As Court Trustee.

The Clerk will enter my appearance as counsel for the
Appellant.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 S. La Salle St.,
Chicago, Illinois.

Endorsed: Filed August 25, 1939. Frederick G. Campbell,
Clerk.

And afterwards, to-wit: On the eighth day of September, 1939, there was filed in the office of the Clerk of this Court, in causes Nos. 6986-7060, a motion for consolidation, which said motion for consolidation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

In the Matter of
Granada Apartments, Inc.,
a corporation,

Debtor.

City National Bank and Trust Company
of Chicago, individually and as Successor
Trustee, etc., *et al.*,

No. 6986.

Appellants,

vs.

Weightstill Woods, Court Trustee, *et al.*,
Appellees.

MOTION.

Now come City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, copartners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants in the above entitled cause, by Vincent O'Brien, John Merrill Baker and Tracey Wilson Buckingham, their counsel, and move the Court for the entry of an order:

(a) That the appeal of Appellants allowed by this Court and now pending in this Court as the above entitled cause number 6986, and the appeal of Appellants taken to this Court pursuant to notice of appeal heretofore filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, and now pending in this Court as cause number 7060, be consolidated as cause number 6986;

(b) That the transcript of record now filed with the

Clerk of this Court in the above entitled cause number 6986 and the transcript of record now filed with the Clerk of this Court in cause number 7060, be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated;

(c) That the Clerk of this Court be directed to cause to be printed only such portions of the single consolidated transcript of record as are designated in "Exhibit A" attached to this motion and made a part hereof, including the printing of a condensed and narrative statement of the transcript of proceedings now filed with the Clerk of this Court in cause number 7060 and of a summary statement of certain exhibits attached to said condensed and narrative statement, in lieu of the printing of said transcript of proceedings and said exhibits in full, and that the said single consolidated transcript of record as so now filed and the said single printed transcript of record shall stand as the record in both of said appeals as so consolidated, with leave to any party where necessary or desirable to refer by citation to the transcript by page as well as to the printed transcript; and

(d) That Appellants be permitted to file one brief and one reply brief with respect to both appeals as so consolidated, and that each of the Appellees be permitted to file one brief with respect to both appeals as so consolidated, the said respective briefs and reply brief to stand as the briefs and reply briefs in both of said appeals as so consolidated.

That in support of said motion the said Appellants represent:

1. That on May 2, 1939 the District Court of the United States for the Northern District of Illinois, Eastern Division, entered an order in proceedings therein pending and an appeal was taken from said order by Appellants pursuant to the Federal Rules of Civil Procedure by filing a notice of appeal as therein provided;

2. That a portion of the said order of May 2, 1939 dismissed certain petitions of Appellants praying for the allowance of fees and expenses and, therefore, pursuant to the ruling of this Court in the case of *In re Albert Dickinson Co., Inc.*, 104 Fed. (2d) 771, Appellants filed their petition with this Court for leave to appeal, which petition was granted, said appeal being the appeal in the said above entitled cause number 6986;

3. That in the appeal taken pursuant to notice of appeal, Appellants filed with the Clerk of the District Court their designation of record, and the transcript of record has been filed with the Clerk of this Court and docketed as number 7060;

4. That in this appeal, number 6986, Appellants have filed with the Clerk of this Court, pursuant to praecipe filed with the Clerk of the District Court, a transcript of a short record containing only the formal documents necessary, together with the transcript of record filed in the appeal taken pursuant to notice of appeal, number 7060, to make one complete transcript of record which can be used in both appeals as consolidated;

5. That both of said appeals vary only in form and not in substance in that the parties and issues raised are identical in both appeals;

6. That the transcript of the proceedings had and taken in the District Court is very large and voluminous and, including exhibits, contains some 2200 pages; that Appellants in their assignment of errors and statement of points have assigned numerous errors to findings of fact made by the District Court, alleging that such findings of fact were either not supported by the evidence or that there was no evidence whatever to support them or that they were contrary to the evidence and it was therefore necessary to bring the complete record, including the entire transcript of the proceedings, before this Court on appeal; that Appellants have prepared and lodged with the Clerk of this Court a condensed and narrative statement of said testimony and summary statement of certain exhibits and have served a copy thereof upon Weightstill Woods, Court Trustee, one of the Appellees herein; and that in order to reduce the cost of printing the transcript of record in this Court and to make the record more convenient for this Court, Appellants are requesting in this motion that only certain pleadings and exhibits, as indicated in "Exhibit A" hereto, be required to be printed at all and that the condensed and narrative statement of evidence and summary of certain other exhibits lodged with the Clerk and served on Weightstill Woods as aforesaid be printed in lieu of the transcript of proceedings and said exhibits in full; and

7. That this motion is addressed to this Court by virtue of Subdivision (1) of Rule 75 of Federal Rules of

Civil Procedure, which provides that what part of the record on appeal filed in the Appellate Court shall be printed and the manner of the printing and the supervision thereof shall be as prescribed in the rules of the court to which the appeal is taken. The same rule has been adopted by the District Court of the United States for the Northern District of Illinois, Eastern Division, being Subdivision (1) of Rule 27 of the Rules of that Court. That by virtue of Rule 42 of the Rules of this Court, Subdivision (1) of Rule 75 of the Federal Rules of Civil Procedure has been adopted by this Court as a portion of its Rules.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,

Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933 with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, copartners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
*Attorneys for Petitioners,
105 South La Salle Street,
Chicago, Illinois.*

EXHIBIT A.

The following documents to be included in the printed transcript of record:

1. Documents included in designation of record filed here in cause No. 7060:
6. Order entered May 11, 1937 approving voluntary and involuntary petitions as properly filed and consolidating voluntary and involuntary petitions and appointing temporary Trustee.
10. Order entered May 20, 1937 approving bond of Weightstill Woods, temporary Trustee, in amount of \$20,000.
11. Intervening petition of Bondholders Protective Committee filed May 24, 1937.
12. Order entered May 24, 1937 granting leave to Committee to file intervening petition and order that notice of all motions and hearings be served on Defrees, Buckingham, Jones & Hoffman and leave to Committee to file Plan instanter and objections to Plan to be filed with Clerk on or before June 23, 1937, creditors classified and claims to be filed with Referee Chindblom on or before June 23, 1937 and objections on or before July 3, 1937 and cause set for July 9, 1937 for consideration of claims, proposal and consideration of confirmation of Plan and amendments and petitions for fees and expenses.
13. Plan of Reorganization of Debtor filed May 24, 1937.
14. Proof of claim of City National Bank and Trust Company of Chicago, as Trustee, filed June 23, 1937 with Referee Chindblom pursuant to order entered May 24, 1937.
15. Proof of claim of Bondholders Protective Committee filed June 23, 1937 with Referee Chindblom pursuant to order entered May 24, 1937.
16. Objections of Weightstill Woods, as Trustee, to various claims filed with Referee Chindblom pursuant to order entered May 24, 1937.
17. Report of Carl R. Chindblom, Referee in Bankruptcy, as Special Master, filed on July 8,

1937 on claims and objections thereto and acceptance of Plan of Reorganization.

18. Order entered July 14, 1937 on allowance or disallowance of claims pursuant to order entered May 24, 1937, including allowance of claim of City National Bank and Trust Company of Chicago, as Trustee, with respect to First Mortgage Six Per Cent Real Estate Gold Bonds of Debtor and claim of Bondholders Protective Committee.

19. Order entered July 12, 1937 continuing Weightstill Woods as temporary Trustee of Debtor until further order of court.

20. Acceptance of Plan by Committee filed July 12, 1937.

21. Order entered July 14, 1937, Plan modified and amended; objections overruled and Plan, as modified and amended, approved and confirmed and petitions for fees to be filed September 14, 1937 and continued to September 14, 1937 for hearing on petitions for fees and expenses and on final decree.

22. Order entered July 15, 1937 amending order of confirmation.

24. Order entered August 30, 1937 granting leave to City National Bank and Trust Company of Chicago, as Trustee, to file report and objections to be filed in 10 days and hearing set for September 15, 1937.

25. Report and account of City National Bank and Trust Company of Chicago, as Trustee, filed August 30, 1937.

26. Answer and counterclaim filed September 9, 1937 by Weightstill Woods, as Trustee.

27. Objections filed September 9, 1937 by Weightstill Woods, as Trustee.

28. Order entered September 14, 1937 granting leave to City National Bank and Trust Company of Chicago, as Trustee, to file amendment to proof of claim.

29. Amendment to proof of claim filed September 14, 1937 by City National Bank and Trust Company of Chicago, as Trustee.

30. Order entered September 14, 1937 granting

Exhibit A.

leave to Weightstill Woods, as Trustee, to file petition to show inter-hotel services and rule on any party in interest desiring to file an answer thereto to file such answer within 5 days and hearing on petition and answer, if any, set for September 21, 1937.

31. Order entered September 14, 1937 ruling City National Bank and Trust Company of Chicago, as Trustee, to file such answer as it may desire to answer and counterclaim of Court Trustee, and hearing on report and account of City National Bank and Trust Company of Chicago and answer and counterclaim thereon set for September 21, 1937.

32. Petition filed September 14, 1937 by Weightstill Woods, Trustee, to have determined the compensation for services re Arlington Hotel.

33. Answer of Arlington, Inc. filed September 18, 1937 to petition of Weightstill Woods, as Trustee, filed September 14, 1937.

34. Petition of Defrees, Buckingham, Jones & Hoffman filed September 14, 1937 for allowance of fees.

35. Petition of Bondholders Protective Committee filed September 14, 1937 for allowance of fees and expenses.

36. Answer of City National Bank and Trust Company of Chicago, as Trustee, filed September 18, 1937, to counterclaim of Weightstill Woods, as Trustee.

37. Order of reference entered October 14, 1937 to Carl R. Chindblom, Special Master, to receive evidence of any applicant for fees, to reduce said evidence to writing and to report the same to the court and hearing on petitions for fees continued to October 21, 1937 and for entry of final decree.

38. Report of Carl R. Chindblom, Referee in Bankruptcy, as Special Master, filed October 21, 1937 on taking of evidence on application for fees and expenses.

39. Petition of Protective Committee filed October 13, 1937 for approval of form of documents to consummate Plan.

40. Order entered October 22, 1937 on petition

of Bondholders Protective Committee amending and approving documents and designating original Trustees and authorizing Committee and counsel to consummate Plan.

41. Order entered October 12, 1937 taking report and account of City National Bank and Trust Company of Chicago, as Trustee, and answer and counterclaim of Weightstill Woods, as Trustee, under advisement, and Weightstill Woods, as Trustee, to file brief and submit findings of fact and conclusions of law within 15 days, and City National Bank and Trust Company of Chicago, as Trustee, to file brief and submit findings of fact and conclusions of law within 30 days, and Weightstill Woods, as Trustee, to reply within 40 days.

42. Order entered October 21, 1937 consolidating certain hearings relating to City National Bank and Trust Company of Chicago, as Trustee.

43. Suggestions and objections of City National Bank and Trust Company of Chicago, Charles S. Tuttle, et al., and Defrees, Buckingham, Jones & Hoffman to the decree, findings of fact and conclusions of law drafted by the Court Trustee and presented to the Court September 24, 1938, said suggestions and objections being filed September 30, 1938.

44. Memorandum of court relating to fees and expenses filed October 25, 1937.

46. Order entered December 30, 1937 identifying and approving certificate of evidence and transcript of proceedings in matter of report and account of City National Bank and Trust Company of Chicago, Trustee, and answer and counter-claim thereto consisting of three Volumes (Vols. I, II and III).

47. Motion of Weightstill Woods, as Trustee, on December 30, 1937 for rule on Protective Committee to record releases and proceed for clearing of title.

51. Statement of receipts and disbursements May 17, 1937 to March 31, 1938 filed April 2, 1938.

53. Order entered May 24, 1938 reducing bond of Weightstill Woods, as Trustee, to \$5,000 and

Exhibit A.

that Weightstill Woods, as Trustee, be continued as Trustee until after disposition of all pending litigation to which he is a party.

54. Transcript of proceedings filed July 15, 1938.

55. Findings and order entered May 2, 1939.

59. Notice of appeal with statement of the names of the parties to whom such notice was mailed and the date of mailing, as shown by the affidavit of mailing on file in the office of the Clerk of the District Court.

62. Statement of points.

2. Documents included in praecipe for record filed in this cause No. 6986;

2. Order entered June 20, 1939 continuing date for entry of final decree to November 16, 1939.

3. Condensed and narrative statement of transcript of proceedings and summary statement of certain exhibits lodged with the Clerk of this Court in this cause No. 6986.

4. The following exhibits in full contained in said transcript of proceedings heretofore lodged with the Clerk of this Court in cause No. 7060:

VOLUME I.

	Page
1. Court Trustee's Exhibit B	92
2. Court Trustee's Exhibit J (Pages 11-16, inclusive, and pages 54-56, inclusive)	168
3. Court Trustee's Exhibit Zero-1	487a
4. Court Trustee's Exhibit Zero-3	496
5. Court Trustee's Exhibit R	464a
6. City National's Exhibit 1	273
7. City National's Exhibit 2	682
8. City National's Exhibit 3	683
9. City National's Exhibit 4	685
10. City National's Exhibit 5	691
11. City National's Exhibit 8	765

VOLUME II.

	Page
12. Court Trustee's Exhibit U	884
13. Court Trustee's Exhibit V (Only that part carried under the black-faced heading of "Valuation" and running down to the black-faced heading of "Income")	892
14. Court Trustee's Exhibit Y	959
15. Court Trustee's Exhibit Y-1	959
16. City National's Exhibit G	1130
17. City National's Exhibit O	1281
18. City National's Exhibit P	1288
19. City National's Exhibit R	1299
20. City National's Exhibit T (Order in full on pages 1309 and 1310 and pages 1311-1315, inclusive)	1309
21. City National's Exhibit U	1344

VOLUME III.

22. City National's Exhibit W	1487
23. City National's Exhibit Z	1580
24. City National's Exhibit A-1 (First two pages thereof and recapitulation appearing on pages 1633-ee to 1633-hh)	1633a
25. Court Trustee's Exhibit AA	1797
26. Court Trustee's Exhibit BB	1825a
27. Court Trustee's Exhibit 2	1877
28. City National's Exhibit 2	1905-11
29. City National's Exhibit 3	1905-14
30. City National's Exhibit 4	1905-18
31. City National's Exhibit 5 (Schedule A-3 at pages 1905-1919)	1905-31
32. City National's Exhibit 6 (Schedule P-4 at page 2108)	2110-18
33. City National's Exhibit 7 (Schedule 1 at page 2111-1)	2111-6
34. City National's Exhibit 8	2115
35. Court Trustee's Exhibit R	2140

Endorsed: Filed September 8, 1939. Frederick G. Campbell, Clerk.

886 *Counter Motion to Dismiss Appeal, Etc.*

And afterwards, to-wit: On the sixteenth day of September, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, a counter motion to dismiss etc., which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

No. 6986.

In the Matter of

Granada Apartments, Inc.,

Debtor. }

COUNTER MOTION TO DISMISS APPEAL 6986.
ANSWER TO MOTION FOR CONSOLIDATION.

Weightstill Woods,
As Court Trustee.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

No. 6986.

In the Matter of
Granada Apartments, Inc.,
Debtor.

COUNTER MOTION TO DISMISS APPEAL 6986.

Weightstill Woods as court trustee, presents the following answer and objections to all petitions and motions by Appellants in this court, and respectfully makes motion that appeal 6986 as allowed by this court, be dismissed for want of power and jurisdiction for this court to allow such an appeal.

Respectfully submitted,
Weightstill Woods,
As Court Trustee.

ANSWER AND OBJECTIONS TO THE APPEAL
AND TO ALL MOTIONS AND PETITIONS
BY THE APPELLANTS.

Weightstill Woods as Court Trustee respectfully says:

1. Your objector is court trustee in proceedings 65811, in the District Court of the United States at Chicago, which suit was filed April 19, 1937, for the reorganization of Granada Apartments, Inc., debtor, an Illinois corporation, and remains pending.

2. That on May 2, 1939 in said proceedings, a decree was entered in said District Court to dispose of an accounting between City National Bank and Trust Company and others, and said Court Trustee for the debtor.

3. That on June 1, 1939, said City National Bank and Trust Company and others, filed in said proceedings in the District Court, their notice of appeal from said de-

cree, and on June 8, 1939, filed their Designation of Points and Praeclipe for Record, in which they stated that said record was to be filed on or before July 9, 1939, as an appeal in the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois; which was done pursuant to Rule 73 established by the Supreme Court to govern appeals, and pursuant to Section 25 of the Chandler Act in force June 22, 1938. More than \$500 is involved in said appeal. On July 7, 1939, appellants secured an order in District Court, extending time until August 19, 1939, for docketing said case on appeal; and within said time did so docket said appeal in this Court of Appeals as case No. 7060.

4. That on June 10, 1939, said Court Trustee also, in the same manner, took an appeal from portions of said decree dated May 2, 1939, by his notice filed in said District Court pursuant to said rules and statute. More than \$500 is involved in said appeal. In due course said appeal was docketed as No. 7061 in the Court of Appeals.

5. That on June 12, 1939 (more than forty days after decree of May 2, 1939), said City National Bank and Trust Company and others, filed as cause 6986 in said United States Circuit Court of Appeals for the Seventh Circuit, their new petition and exhibits, running more than one hundred typewritten pages, seeking to have said Appellate Court by its order grant an additional appeal, upon the same grounds to the same parties and from the same decree dated May 2, 1939, and they expressly stated to Court of Appeals that more than \$500 is involved.

6. That in opposition to said appellate petition filed by City National Bank and others on June 12, 1939, in said Circuit Court of Appeals, your objector as Court Trustee filed an answer, which asked that the prayer of said appellate petition by City National Bank and Trust Company and others be denied.

7. That the Circuit Court of Appeals by order June 22, 1939, allowed an appeal, and later issued a citation.

8. That on June 26, 1939 said appellants in 6986 filed in the District Court, a second praecipe for record mentioning 60 items, in substance a repetition of said praecipe filed June 8, 1939 by them for their prior appeal dated June 1st, and at the end thereof stated that the record in 6986 is to be filed in Court of Appeals on July 22, 1939. Later they sought and obtained an order by Court of Appeals to enlarge the filing time until September 16, 1939, and filed a record within that time.

9. Objector says that said orders and citation by Circuit Court of Appeals, is an attempt to revive former practice and procedure, which has been abolished by Act of Congress and the rules established by the Supreme Court for the conduct of appeals; and that such attempted revivor is contrary to paramount law. Such revivor would set at naught the years of effort by Congress, the Rules Committee, the Supreme Court, and the profession generally, which have labored to establish simple and uniform procedure for appeals.

10. It is obvious that the allowance of said appeal in said manner by the Court of Appeals, introduces duplication, repetition, surplusage and confusion into the record of said case in the District Court and the Court of Appeals. That is prejudicial to the appeal of right previously taken, and defeats primary rights vested in the Court Trustee. Under Rule 75 only one record can be certified for all appeals from the same order. Here two are certified. Immediate and irreparably damage results to the appeal regularly and rightfully taken by objector the Court Trustee.

11. Objector states that any attempt that may be made to justify said appellate petitions and orders, by reference to Section 250 of Chandler Act, is unfounded because (1) no intention exists and no effort is made to review any part of said decree dated May 2, 1939, "upon the original papers"; and (2) such an appellate allowance of appeal is not taken "in the same manner" nor "within the time provided for appeals by this act" (Chandler Act, Section 250); and (3) more than the sum of \$500 is involved (Section 24 of Chandler Act).

12. Wherefore objector says that all proceedings in 6986 should be dismissed for want of authority and jurisdiction, with costs to be assessed against the appellants.

Respectfully submitted,
Weightstill Woods,
As Court Trustee.

Weightstill Woods being sworn, states that he has prepared and has read the foregoing answer and objections, and that the factual statements therein made are true.

Subscribed and sworn to before me this September 15, 1939.

Notary Public, Cook County, Illinois.

SUGGESTIONS AND AUTHORITIES IN SUPPORT OF
COUNTER MOTION TO DISMISS APPEAL AND IN
SUPPORT OF ANSWER AND OBJECTIONS TO
CONSOLIDATION.

A. The order by the Supreme Court for General Orders in Bankruptcy in effect since February 13, 1939, provides that said orders:

"shall govern all proceedings then pending to which its provisions are applicable except to the extent that in the opinion of the court its application to such proceedings would not be practicable or would work injustice."

and order "No. 36 Appeals" provides:

"Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including *the rules of civil procedure for the District Courts of the United States.*"

B. Federal Court Rule 73, established by the Supreme Court for the District Courts of the United States, provides the manner and time for taking an appeal and for docketing an appeal. This supplants former practice, which is abolished.

The time here sought to be allowed to appellant by this court to September 16, 1939 for filing the transcript, exceeds the 90 days maximum under Rule 73g, after appeal taken in the District Court by appellants on June 1, 1939. By the Statute only the District Court may enlarge the time. This Circuit Court of Appeals is not given that power by the statute. Rule 75 provides that there may be only one record, for all appeals from the same order. The appeals now sought to be consolidated are from the same order dated May 2, 1939.

C. Section 250 and 498 of the Chandler Act, are not additional machinery for appeals. (Your Honors so ruled on former appeal between said parties, interpreting similar language of 77B.) *Re Granada*, 104 F. 2d 970 or 973, where this Court of Appeals says:

"The words 'but appeals from orders fixing such allowances may be taken to the Circuit court of appeals, and independently of other appeals in the same proceeding and shall be heard summarily' merely des-

ignate a class of orders from which an appeal may be taken without in anywise enlarging the class of persons who are entitled to appeal."

Those sections merely say that appeals about allowances for compensation or reimbursement "shall be heard summarily upon the original papers" and may be taken "independently of other appeals in the same proceeding." It was necessary to use the alternate language "be taken to and allowed by the Circuit Court of Appeals" because Section 24 of the Act allows appeals for less than \$500 only by discretion of the Court of Appeals.

D. At bar we do not have that kind of case. The petitions for appellants all show to this court, that more than \$500 is involved in this court, and show that an appeal of right separately was taken by Notice of Appeal filed June 1, 1939 in the District Court. Under these facts this court lacks jurisdiction to allow an appeal. Those facts exclude such jurisdiction. Also:

1. No intention exists and no effort is made to review any part of the order dated May 2, 1939, "on the original papers."

2. Such an appellate allowance of appeal has not been taken "in the manner" nor "within the time" provided for appeals by Section 250 of the Chandler Act.

3. Only the District Court may extend the time for filing the record on appeal. Rule 73g. It did not enter the order therefor.

4. More than \$500 is involved in this record (Section 24).

F. The petition for appellants filed July 20th (par. 8) speaks of "physical impossibility and unnecessary duplication." Your objector pointed to that fact by answers filed June 17, 1939 to the first petition here for this appeal. Repetition, surplusage and confusion are the result of the revival of the old double procedure.

G. Furthermore all the old uncertainty about appeals will be revived, if this court allows appeals when \$500 or more is involved. All the work done by Congress, by the Supreme Court, by the Rules Committee, and by the profession for many years, seeking to simplify and unify appellate procedure, would be swept away by such revivor of former practice.

H. Objector submits that the order by Court of Appeals dated June 22, 1939, for an allowance of appeal

6986, is void for want of authority. It conflicts with the paramount law. That order should be vacated. The order dated July 21, 1939 for filing time should also be vacated. All the petitions by appellants to this court should be denied. The citation should be quashed. The petition to this court for an appeal, dated June 12, 1939, should be dismissed for want of jurisdiction in this court to entertain the same under existing law applicable to this case.

I. In the alternative objector suggests that this Court of Appeals should submit the question of validity of appeal 6986 to the Supreme Court at Washington, as a preliminary question before judgment, under Rule 39 of the Supreme Court. The public interest will be promoted by prompt settlement in that court of this question of the jurisdiction of this court to allow appeals.

J. Objector asks that the matter of printing the record (par. c, 6 and 7 of said petition by appellants September 8, 1939) be deferred until the matter of jurisdiction to allow appeals be first finally determined; and that objector have leave to examine the record fully thereafter, and to submit his suggestions as to matter for printing.

The Wrong Manner of Appeal Will Be Dismissed.

Union Trust Company of Maryland v. Townsend,
101 F. 2d 903 at 914, C. C. A. 4.

Bender v. Davis, 365 Ill. 389.

The Methods of Review Are Mutually Exclusive.

England v. Ducasse (C. C. A. 9, Bankruptcy Law Service 51828).

Wayne U. G. Co. v. Owens I. G. Co., C. C. A. 4,
83 F. 2d 98, 84 Fed. 965.

F. P. Newport Corporation, 93 F. 2d 630 at 633,
C. C. A. 9.

London v. O'Dougherty, 102 F. 2d 524 at 525, C.
C. A. 2.

Winton Shirt Corporation, 104 F. 2d 777 at 779,
C. C. A. 3.

3 Ohlinger Federal Practice 949, 953, 956.

Finletter Reorganizations, page 611.

Bender v. Davis, 365 Ill. 389.

The One Opposing Decision Should Be Reversed.

Albert Dickinson Co., 104 F. 2d. 771 at 779.

Received copy of the foregoing counter motion, answer, objections, authorities and suggestions.

Vincent O'Brien and Associates,

By _____

Mort D. and Frank Goldberg,

By _____

Endorsed: Filed September 16, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the sixteenth day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 7060, a motion to dismiss certain appellants out of appeal, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc., a
Corporation,

Debtor.

City National Bank and Trust
Company, and others,

Appellants,

vs.

Weightstill Woods, Court Trustee,
and others,

Appellees.]

No. 7060.

MOTION BY COURT TRUSTEE.

Weightstill Woods as Court Trustee makes motion that certain appellants

City National Bank and Trust Company of Chicago
as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds;

Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, as Members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds,

be dismissed out of said proceedings, and that said appeal be dismissed as to them by order of this court;

For reasons set forth in suggestions herewith.
The Court Trustee asks further time to consider the condensed Narrative Statement of the Evidence, and leave thereafter to file his suggestions as to matter for printing.

Respectfully submitted,

Weightstill Woods,
as Court Trustee.

SUGGESTIONS BY THE COURT TRUSTEE IN SUPPORT OF MOTION TO DISMISS AS TO CERTAIN APPELLANTS.

1. Named appellants (successor trustee and Committee) were in this court on former appeal, case 6744, which is reported 104 F. (2d) 970, suing this Court Trustee.
2. That appeal was dismissed because named appellants are defunct and no longer have legal existence.
3. By opinion in that appeal Your Honors rule at page 972:

"It would seem, on general principles, that neither the bank trustee, nor the Committee, had any interest in the proceedings after the plan of reorganization, approved by the court, had been consummated, with the exception of the former's claim No. 9, which we shall assume was pending at the time of the entry of the order appealed from. The deed of trust from which the former received its authority, and the bonds deposited with the latter and from which it received its authority, were, as heretofore recited, cancelled and delivered to the reorganized company and thus the basis upon which both appellants participated in the reorganization proceedings were destroyed."

That ruling by Your Honors was based upon your finding in the same appeal, between these same parties as follows:

"The new corporation, Granada Apartments Hotel Corporation, was issued a charter by the State of Illinois October 30, 1937, and on November 1, 1937, the trustee executed and delivered to it a deed to the real estate and an assignment of all the personal property of the debtor, as well as possession, management, and control of the debtor's property and affairs,

excepting only cash in bank and rights of action as directed by the court in its order of October 22, 1937. In conformity with the plan, the bondholders and other creditors of the debtor were issued securities of the new corporation in lieu of those of the debtor. The original trust deed by which the trust company received its authority, as well as the committee representing bondholders whose bonds were secured thereby, was cancelled and released of record in the Recorder's office of Cook County, Illinois, on February 10, 1938, surrendered to the court trustee, and by him delivered to the new corporation."

4. Thereby it is adjudicated on former appeal, that said bank trustee and committee are defunct and have no legal existence since Granada plan was confirmed July 14, 1937.

5. Wherefore the court trustee respectfully asks for an order of dismissal pursuant to the motion herewith.

Respectfully submitted,

Weightstill Woods,
Weightstill Woods,
as Court Trustee.

Received copy of foregoing motion and suggestions.

Vincent O'Brien and Associates,
By Vincent O'Brien,
Mort D. and Frank Goldberg,
By Mort D. and Frank Goldberg.

Endorsed: Filed September 16, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-fifth day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 6986, an Answer of appellants to Court Trustee's motion to dismiss appeal, which said Answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc., } No. 6986.
Debtor. }

**ANSWER OF APPELLANTS TO COURT TRUSTEE'S
MOTION TO DISMISS APPEAL.**

Now come City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Trust Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the protective committee acting under deposit agreement for the holders of said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, and for answer to the motion of Weightstill Woods, as Court Trustee, to dismiss their appeal herein, say:

1. They admit the factual averments contained in paragraphs 1 to 8, inclusive, of the Court Trustee's motion to dismiss except as to the statement contained in paragraph 8 that a second praecipe for record was filed, as to which they say that there was but one praecipe for record filed in the matter of this appeal and that in the matter of the other appeal, taken as of right and here docketed as No. 7060, there was a designation of record filed.

2. Further relevant facts not mentioned by the Court Trustee in his statement are as follows:

(a) The decree mentioned in paragraph 2 of the Court Trustee's motion from which appeal is taken is not limited to the disposition of an accounting between City National Bank and Trust Company and others, for said decree makes final disposition of the claim of City National Bank and Trust Company of Chicago and of the requests for allow-

ances of fees and expenses made by the Committee and by Defrees, Buckingham, Jones & Hoffman as counsel for the Committee, and others.

(b) In paragraph 5 of his said motion, the Court Trustee refers to the petition for leave to appeal filed in this cause, No. 6986 by Appellants on June 12, 1939, but fails to mention the pertinent portion of said petition appearing at the bottom of page 2 and at the top of page 3 thereof, where Appellants advised the Court of the appeal taken as of right from the decree entered May 2, 1939 and further advised the court that subsequent to taking that appeal, Appellants had discovered the case of "In re Albert Dickinson & Company, Inc." which held that an appeal from a fee allowance under the Chandler Act must be taken by petition for leave to appeal.

(c) In paragraph 6 of his said motion, the Court Trustee calls attention to the answer which he filed in opposition to our petition for leave to appeal, but he fails in paragraph 6, or elsewhere in his motion, to point out that in that answer he raised precisely the same points which he now raises again in his motion, and we refer the Court to that answer.

(d) In paragraph 5 of his said motion the Court Trustee refers to our petition for leave to appeal and Exhibits filed June 12, 1939, which he says runs more than 100 typewritten pages. The petition itself is contained in the first eleven pages, and the remaining pages are Exhibits and supporting brief. We particularly refer the court to the petition itself for the facts which existed at the time of the filing of the petition.

(e) In paragraph 5 of his motion, the Court Trustee points out that June 12, 1939, the date of the filing of the petition for leave to appeal, was more than forty days after the date of the entry of the decree May 2, 1939, but fails to call attention to the fact that the fortieth day was Sunday, June 11, 1939.

3. On the facts as so corrected and amplified, Appellants suggest the following points in opposition to the allowance of the Court Trustee's motion to dismiss:

(a) This Court passed upon all the points now repeated by the Court Trustee when it allowed the petition for leave to appeal by its order of June 22, 1939.

(b) As indicated in Appellants' petition for leave to appeal, Appellants were under the belief that petition for leave to appeal from fee allowances was unnecessary under

Answer to Motion.

the Chandler Act. It was only by reason of this Court's decision in the case of Albert Dickinson Company, 104 Fed. (2d) 771, that petition for leave to appeal was submitted to this Court as a portion of said decree entered on May 2, 1939 disallowed certain petitions for fees and expenses.

As petition for rehearing in that case was denied, Appellants still regard that case as binding law in this Circuit and are therefore interested in showing to the Court that this appeal was properly perfected, and in time.

(c) In his motion to dismiss, the Court Trustee says that the petition for leave to appeal was not filed within the required forty days because the decree appealed from was entered May 2, 1939 and the petition was not filed until June 12, 1939, which was forty-one days. The fact is that June 11, 1939 was a Sunday, and we therefore refer the Court to Rule 6(a) of Federal Rules of Civil Procedure and to old Equity Rule 80, both of which provide that where the last day for the doing of an act falls on a Sunday the act is not required to be done until the next succeeding day which is not a holiday.

(d) At page 6 of the Court Trustee's motion, paragraph (b) thereof, he complains that under Rule 73(g) of the Rules of Civil Procedure only the District Court and not the Court of Appeals may enlarge the time for the filing of a record and that the District Court is expressly limited to an extension not exceeding ninety days from the date of the first notice of appeal.

But we point out that Federal Rule 73(g) has nothing to do with the instant case since those rules quite patently relate only to appeals perfected as of right under the new Federal Rules of Civil Procedure, whereas the appeal in the above entitled cause is by leave of the Court of Appeals and the time for the filing of the record is prescribed by the rules of the Court of Appeals, namely, Rule 13, Section 1, which says, among other things, that the transcript shall be filed with the Clerk of the Court of Appeals on or before the return day specified in Section 3 of the rule unless such time is enlarged by a judge of the District Court or by this court or some judge thereof.

Even if, by any possibility, the rule referred to by the Court Trustee did not permit this Court or a Judge thereof to enlarge the time for filing a record, (an inconceivable premise,) and that said rule also limited the time for filing a record to ninety (90) days from the time of filing in this court of a *petition for leave to appeal* and that ninety (90)

days should begin to run on the date of filing the *petition for leave to appeal* although the rule specifically only applies to a *notice of appeal*, Appellants submit that (a) the record was filed in this Court on July 19, 1939, being within said ninety (90) day period, and (b) such motion of the Court Trustee must be dismissed because it was not made before the record was actually filed (*American Gas Machine Co. v. Willcuts*, C. C. A. 8th, 1937, 87 Fed. (2d) 924).

(e) Appellants admit some of the effects contended for by the Court Trustee in paragraph 10 of his petition, but we suggest that they are inherent if appeals from fee allowance must be taken by leave of Circuit Court of Appeals and that, in so far as possible, Appellants are seeking to minimize them by Appellants' motion for consolidation and for the use of one record on both appeals and for the printing of a narrative statement, all of which motions are now pending and undetermined before this court.

Also in the same paragraph 10 the Court Trustee contends that under Rule 75 only one record can be certified for all appeals from the same order, and he claims that here two are certified. The fact is, of course, that in so far as both Appellants and the Court Trustee have appealed separately as of right from the decree of May 2, 1939, there is but one record. In so far as Appellants have appealed separately by leave of this Court in the above entitled cause there was, of course, a short record necessary to procure docketing in this court, but Appellants' same motion above referred to asks that only the one record stand as the transcript in the matter of both of Appellants' appeals.

(f) In paragraph 11 of his motion and in paragraph D-1 thereof, the Court Trustee refers to a review of orders allowing or disallowing fees "on the original papers." The original papers we suppose would include the various petitions for fee and expense allowances, any answers thereto, transcript of any testimony taken thereon, the Master's Report and the order of court allowing or disallowing the petitions. We submit that all of those original papers will be found in the one consolidated transcript of record which Appellants have requested leave to file in this court.

(g) As to Court Trustee's suggestion to this court that it certify to the Supreme Court the question of the validity of this appeal, we say that if this court thought that this were such a question as should be certified, the court certainly would not choose this case as one in which to do it,

for in this case, if the appeal by leave were dismissed, every question raised in this appeal would, nevertheless, be before the court by the appeal which has been perfected as of right. And by the same token, Appellants submit that there is no point to the Court Trustee's request that the matter of printing the record be deferred until the matter of jurisdiction to allow such an appeal be first determined by the Supreme Court, since, regardless of the decision on that point, the very same questions of the printing would arise in relation to the transcript of record filed in connection with the appeal taken as of right.

Appellants submit that the Court Trustee's motion to dismiss appeal 6986 should be denied, that Appellants' pending motion in respect of the matter of printing and other questions should be forthwith granted to the end that this controversy, taken under advisement by the District Court in December of 1937 and withheld from decree until May 2, 1939, may finally reach the attention of this Court for disposition on the merits.

Vincent O'Brien,
John Merrill Baker,
Tracy W. Buckingham,
Attorneys for Appellants.

Endorsed: Filed September 25, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-fifth day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 7060, an Answer and counter-suggestions of appellants to motion of Court Trustee to dismiss the appeal as to certain appellants, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

City National Bank and Trust
Company, and others,
Appellants,
vs.
Weightstill Woods, Court Trustee,
and others,
Appellees.

No. 7060.

ANSWER AND COUNTER-SUGGESTIONS OF APPELLANTS TO THE MOTION BY THE COURT TRUSTEE TO DISMISS THE APPEAL AS TO CERTAIN OF THE APPELLANTS, ETC.

Now come City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Trust Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under deposit agreement for the holders of said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metelius Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants, by Vincent O'Brien, John Merrill Baker and Tracy Buckingham, their attorneys, and in opposition to the said motion of the Court Trustee now pending in the above entitled cause, respectively submit the following:

1. The appeal in the above entitled cause was perfected as of right by filing notice of appeal pursuant to Federal Rules of Civil Procedure and not by leave of this court,

hence there is no petition of record from which the court may ascertain the facts;

2. The decree appealed from, however, is the same as the one from which leave to appeal was granted to the same Appellants in the cause now pending in this court as No. 6986, and we refer the court to the petition for leave to appeal in the latter cause for the detailed facts;

3. Reference to that petition for leave to appeal will disclose that the primary complaint of all the Appellants concerning the decree appealed from in that cause and in this is that the District Court disallowed the claim or petitions of the Appellants, and each of them (namely, City National Bank and Trust Company of Chicago, the Committee, and Defrees, Buckingham, Jones & Hoffman, their counsel) for the allowance of certain fees and expenses claimed by them individually, and not in any representative capacity on behalf of bondholders, depositors or others, and that as to City National, the said decree sustained objections of the Court Trustee to an accounting by it and further sustained the counterclaim against it, individually and as Successor Trustee, filed by the Court Trustee, and in effect denied the allowance of fees to all Appellants by way of attempted recoupment, or for want of equity.

4. In support of his motion that the appeal be dismissed as to City National Bank and Trust Company of Chicago and as to the committee, the Court Trustee relies upon the opinion of this court rendered in a collateral proceeding docketed here as No. 6744 and reported in 104 Fed. (2d) 970. An examination of that opinion will disclose that it is inapplicable to the case at bar. The gist of the decision was

(a) That since the trust deed had been released, the City National Bank and Trust Company of Chicago, as Indenture Trustee, had lost the source of its authority to represent bondholders, and since the securities of the new company on reorganization had been issued and distributed in exchange for bonds deposited with the committee, the Committee no longer had any standing as the representative of depositing bondholders;

(b) That, in any event, neither the Committee nor the Indenture Trustee had the right to be heard upon the question appealed from because, even though creditors, they were not parties to the proceeding

and had not been given leave to intervene to be heard upon the question.

It was, therefore, held that neither the Committee nor the Indenture Trustee had the right under the statute to appeal from an order allowing compensation to the Court Trustee. Nowhere in that opinion, however, is it held that either a claimant or a party for the allowance of administrative expenses may not appeal from an order disallowing its claim or petition, or that parties to an accounting action and a counterclaim cannot appeal from a *décree* against them, individually, with respect thereto. Section 77B(c)9 expressly provides for the allowance of reasonable compensation for the services rendered and reimbursement for the actual and necessary expenses incurred in connection with the proceeding and the plan by officers, parties in interest, depositaries, reorganization managers and committees, or other representatives of creditors and stockholders and the attorneys or agents of any of the foregoing and of the debtor, and that appeals from orders fixing such allowances may be taken to the court of appeals independently of other appeals in the proceeding and shall be heard similarly, and by virtue of Section 24(a) of the Chandler Act an appeal may arise as a matter of right from any order disallowing a claim.

5. Moreover, in reaching its opinion in the aforementioned case, this court refers to and relies upon an order of the District Court entered October 22, 1937, a copy of which order is hereto annexed as Exhibit "A". That order, among other things, provided that all property of the debtor and of the Court Trustee was to be assigned to the new company, but that there was to be reserved and excepted from such assignment "all claims and rights of action (including matters of account) by Weightstill Woods, as said Trustee, against the Arlington, Inc., a corporation, City National Bank and Trust Company of Chicago, a corporation * * * it being understood and agreed by and between the parties to this agreement that such claims and rights of action are to be retained by said Weightstill Woods, as said Trustee, for the purpose of continuing the prosecution thereof to final disposition in said above-mentioned cause, and are to be subject to the further order in the said court in said above-mentioned

cause." That order further provided "that nothing herein shall be construed as limiting or prejudicing the right of City National Bank and Trust Company of Chicago in its individual capacity, or as Successor Trustee * * * to proceed to an ultimate determination of its claim numbered 9 and its petition for settlement of accounts heretofore filed herein and to have the amount ultimately found due thereon paid pursuant to the plan of reorganization."

And, on October 21, 1937, on motion of the court Trustee himself an order was entered, which is hereto attached and fully set forth as Exhibit "B", in and by which the District Court, among other things, ordered that all evidence taken in respect of the petitions to the court for allowances of fees and expenses to the Committee for services claimed to have been rendered to it by City National Bank and Trust Company of Chicago, as depositary, and for facilities furnished by City National Bank and Trust Company of Chicago and for services of counsel to the Committee or to City National Bank and Trust Company, be consolidated with the accounting proceedings now pending for settlement of accounts between City National Bank and Trust Company of Chicago and the debtor estate, and that all applications for such administrative allowances and all evidence presented pertaining thereto, should be considered as part of the hearing had in open court to be included and considered in preparing the findings and the briefs to be presented to the court and to have disposition as part of said accounting proceedings, namely, the proceedings as so consolidated, which resulted in the decree appealed from, entered May 2, 1939. Indeed, in that very decree the court recites the pleadings and proceedings on which the cause came on to be heard and in doing so, makes express reference to its prior orders, consolidating all of said matters for disposition, including the consolidation order immediately above referred to.

And again, on October 25, 1937, the court, in making its order as to administrative expenses and allowances, provided therein, among other things, that the consideration of the petition of the bondholders' committee for the allowance of fees and expenses and the petition of De-freez, Buckingham, Jones & Hoffman for allowances of counsel fees, is postponed to await the coming in of briefs which have been directed to be filed.

From the record, therefore, it is apparent that the ques-

tion of administrative allowances to the committee and to the Indenture Trustee, and the question as to allowance of all amounts claimed by them individually, and the accounting matters and counterclaim was reserved throughout the case and was not disposed of until the entry on May 2, 1939, of the decree appealed from, none of which was done until long after the time that the plan of reorganization was actually consummated, the Court recognizing by its former orders and its decree that the consummation of the Plan had not made, nor was it intended to make, as Court Trustee suggests, the City National Bank and Trust Company, the Committee and their counsel no longer parties to that portion of the litigation.

6. Furthermore, the Court Trustee, inconsistently with his own position, has perfected, as of right, an appeal against City National Bank and Trust Company of Chicago and the committee which is here docketed as No. 7061 from the same decree of May 2, 1939 from which he says that Appellants have no right to appeal.

Vincent O'Brien,
John Merrill Baker,
Tracy W. Buckingham,
Attorneys for Appellants.

EXHIBIT A.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of
Granada Apartments, Inc.,
a corporation, } In Proceedings for the
Debtor. } Reorganization of a Corporation.
No. 65811.

ORDER.

This cause coming on to be heard upon the petition of the Protective Committee acting under the certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds of Debtor,

and the Court being fully advised in the premises, It Is Ordered:

1. That counsel for the Committee be and hereby is authorized to cause to be incorporated a corporation under and pursuant to the provisions of "The Business Corporation Act" of the State of Illinois, the corporate name of which is to be "The Granada, Inc." or such other name as may be selected by counsel for the Committee. Said corporation, when so organized, to be and to constitute the "Reorganized Company" designated in the Plan of Reorganization of Debtor heretofore confirmed herein by order entered July 14, 1937; the articles of incorporation of said Reorganized Company to be substantially in the form attached as Exhibit "A" to said petition, which form be and hereby is approved.

2. That the form of By-Laws of the Reorganized Company attached to said petition as Exhibit "B" be and hereby is approved and the persons who shall constitute the first Board of Directors of the Reorganized Company be and hereby are authorized to adopt said By-laws in form substantially as set forth in said Exhibit "B" to said petition.

3. That the form of the Trust Agreement attached as Exhibit "C" to said petition be and hereby is amended as follows:

(a) By adding as a first sentence to Section 4 the following:

"The Participation Certificate shall be registered on the books of the Trustees kept for that purpose at the office of the Depositary and the term 'Holder' of a Participation Certificate or of Participation Certificates shall mean when used herein the then registered holder or holders thereof as shall appear from and by the said books of the Trustees."

(b) By adding a fourth paragraph to Section 4 as follows:

"The holders of Participation Certificates shall have the same rights with respect to the examination of the books and records of the Trustees as are provided for shareholders of a corporation organized under the laws of the State of Illinois with respect to the books and records of an Illinois corporation."

(c) By striking the second paragraph of Section 10 and by substituting in lieu thereof the following:

"This Agreement and the trust hereby created may also be terminated at any time by written directions signed by a majority in number of the holders of Participation Certificates then of record and outstanding hereunder, which Participation Certificate must also represent a majority in number of the whole shares in the trust, provided that to be effective such written directions shall fix the date of such termination and shall be filed with the Depository at least ninety (90) days prior to the date so fixed for such termination."

(d) By adding in paragraph 7 of Section 11 immediately following the words "Managing Trustee" the following words: "to superintend the corporate property and affairs."

(e) By adding in paragraph 7 of Section 11 immediately following the words "additional reasonable compensation" the following words and figures: "of not less than two per cent (2%) of the gross annual income of the Corporation."

(f) By adding an additional sentence to paragraph 4 of Section 16 as follows: "Any one of the original Trustees under this Trust Agreement may be, but need not be, appointed as a successor Depository."

That the form of general assignment and assumption attached as Exhibit "E" to said petition be and hereby is amended by adding a new paragraph immediately following paragraph 5, as follows:

"There is reserved and excepted from this assignment the balance on deposit as of the date hereof to the credit of Weightstill Woods, as said Trustee, with Harris Trust and Savings Bank of Chicago, Illinois, and there is further reserved and excepted from this assignment all claims and rights of action (including matters of account) by Weightstill Woods, as said Trustee, against The Arlington, Inc., a corporation, City National Bank and Trust Company of Chicago, a corporation, Indemnity Insurance Company of North America, a corporation, and the County Treasurer of Cook County, Illinois, it being understood and agreed between the parties to this agree-

ment that such claims and rights of action are to be retained by said Weightstill Woods, as said Trustee, for the purpose of continuing the prosecution thereof to final disposition in said above mentioned cause, and are to be subject to the further order of the said Court in the said above mentioned cause."

4. That the form of Trust Agreement attached as Exhibit "C" to said petition as heretofore amended be and hereby is approved, and Clarence N. Boord, William H. Haight and Weightstill Woods be and hereby are designated as the initial Trustees under said Trust Agreement, the said Trust Agreement to be dated October 30, 1937.

5. The form of the following documents attached as Exhibits "D" to "I", inclusive, to the said petition, being as follows:

(a) Deed from Trustee in these proceedings to the Reorganized Company;

(b) General Assignment and Assumption by and between Trustee in these proceedings and the Reorganized Company, as amended by paragraph 3 of this order;

(c) Notice from Committee to Successor Trustee under trust deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor;

(d) Notice from Committee to Successor Trustee under trust deed dated September 1, 1928, securing Second Mortgage 6% Real Estate Gold Bonds of Debtor;

(e) Release of trust deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor and satisfaction of decree entered December 18, 1936, in the Superior Court of Cook County, Illinois, in Cause No. 519151;

(f) Release of trust deed dated September 1, 1928, securing Second Mortgage 6% Real Estate Gold Bonds of Debtor;

be and hereby is approved.

6. That the respective parties to the said Trust Agreement be and hereby are authorized, empowered and directed to forthwith execute, acknowledge and deliver said Trust Agreement in form substantially as set forth in said Exhibit "C" to said petition, and to do any and all acts necessary and proper to carry out and consummate the matters and things therein contained.

7. That the Committee be and hereby is authorized and directed to forthwith sign the respective notices to the respective Trustees in form substantially as set forth in said respective Exhibits "F" and "G" to said petition, and cause the same to be delivered, and in the event said Successor Trustees or either of them shall fail, neglect or refuse to execute, acknowledge and deliver the said respective instruments referred to in said respective notices within five (5) days after the receipt thereof, then and in that event Carl R. Chindblom be and hereby is authorized and directed to execute, acknowledge and deliver to the Committee said instruments pursuant to said order entered July 14, 1937, in substantially the respective forms as set forth in said Exhibits "H" and "I" attached to said petition.

8. That Weightstill Woods, as Trustee, appointed in these proceedings, be and hereby is authorized, empowered and directed to forthwith execute, acknowledge and deliver to the Reorganized Company said deed in substantially the form as set forth in Exhibit "D" attached to said petition.

9. That Weightstill Woods, as Trustee, appointed in these proceedings, be and hereby is authorized, empowered and directed to execute, acknowledge and deliver to the Reorganized Company said instrument of General Assignment and Assumption in substantially the form set forth in said Exhibit "E" attached to said petition as above amended.

10. That the proper officers of the Reorganized Company upon receipt by it of said instrument of General Assignment and Assumption so executed by the said Weightstill Woods, as Trustee in these proceedings, be and hereby are authorized, empowered and directed, for and on behalf of said Reorganized Company to execute, acknowledge and deliver said instrument of General Assignment and Assumption and to deliver one executed original thereof to the said Weightstill Woods, as said Trustee in these proceedings.

11. That Weightstill Woods, Trustee in these proceedings, be and hereby is authorized, empowered and directed, contemporaneously with the delivery by him of the said deed to the Reorganized Company, to turn over to the Reorganized Company possession of the property and assets of the Debtor then held by him as said Trustee, and shall thereupon within fifteen (15) days there-

after file herein his final report and account as said Trustee in these proceedings.

12. That City National Bank and Trust Company of Chicago be and hereby is designated as Depositary under said Trust Agreement and as the agency pursuant to Section C of the Plan of Reorganization, to which shall be surrendered the securities and instruments of discharge and satisfaction as therein set forth.

13. That the Trustees under said Trust Agreement be and hereby are authorized and directed to deliver to said Depositary the Participation Certificates issuable under said Trust Agreement, and said Depositary be and hereby is authorized and directed to take such steps as may be necessary to effect the distribution of such Participation Certificates in the number of shares and to the persons entitled thereto, and in the manner as provided in the said Plan of Reorganization, but only upon the approval and written direction of the Trustees.

14. That the Reorganized Company be and hereby is authorized and directed to forthwith cause to be issued all of its presently authorized shares of capital stock to the Trustees under said Trust Agreement.

15. That all costs, fees, taxes and expenses incurred in connection with the consummation of the Plan of Reorganization and in connection with the carrying into effect of the matters and things hereinabove set forth shall be paid forthwith, without further order of this Court, by Weightstill Woods, as Trustee in these proceedings, from funds of the Debtor in his possession until such time as he shall turn over the property and assets of the Debtor now in his possession to the Reorganized Company, and thereafter such costs, fees, taxes and expenses so incurred shall be paid by the Reorganized Company without further order of this Court.

16. That nothing herein shall be construed as limiting or prejudicing the right of City National Bank and Trust Company of Chicago in its individual capacity or as Successor Trustee under Trust Deed securing the First Mortgage 6% Real Estate Gold Bonds of Debtor, to proceed to an ultimate determination of its claim numbered 9 and its petition for settlement of accounts heretofore filed herein and to have the amount ultimately found due thereon paid pursuant to the Plan of Reorganization; and nothing herein contained shall be construed as an adjudication or decision of any issues raised by the an-

swer and counterclaim by Weightstill Woods, Trustee in these proceedings, now pending to said claim numbered 9 and petition by City National Bank and Trust Company of Chicago for a settlement of its accounts.

17. That this Court reserve jurisdiction with respect to the matters and things herein contained and with respect to all matters and things hereafter arising in connection with the consummation of the Plan of Reorganization not heretofore determined, and for the purpose of amplifying, extending, modifying or amending this order without further notice.

Enter:

Barnes,
Judge.

Dated October 22, 1937.

EXHIBIT B.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of
Granada Apartments, Inc.,
a corporation, } Proceedings for Reorgani-
 zation.
 } No. 65811.
 Debtor.

ORDER ON MOTION BY COURT TRUSTEE TO CONSOLIDATE CERTAIN HEARINGS, RE CITY NATIONAL BANK AND TRUST COMPANY.

This cause coming on to be heard regularly upon the trial call of this Court, and all counsel of record being present and represented in open Court, and the Court Trustee having presented orally and in writing filed in this cause his motion to obtain this order and other counsel having expressed their views and the Court being fully advised in the premises:

It Is Ordered that all evidence taken before the Referee and the application and petition made to the Court, for allowance of fees and expenses to the Bondholder's Com-

mittee for the services claimed to have been rendered to it by the City National Bank and Trust Company as depository and for facilities furnished by the City National Bank and Trust Company for Committee use and for services of counsel to the Committee or to City National Bank and Trust Company be and hereby are consolidated with the accounting proceedings now pending for settlement of accounts between City National Bank and Trust Company and Debtor Estate.

It Is Further Ordered that all application for such administrative allowance and all evidence presented pertaining thereto shall be considered as part of the hearing which has been had in open Court, to be included and considered in preparing the findings and the briefs to be presented to the Court, and to have disposition as part of said accounting proceedings now pending in this Court.

Enter:

District Judge.

Dated: October 21, 1937.

Endorsed: Filed September 25, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-sixth day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 6986, a Reply by Court Trustee to Counter-suggestions by appellant, etc., which said reply is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc., } No. 6986.
Debtor. }

REPLY BY COURT TRUSTEE TO THE COUNTER-SUGGESTIONS BY APPELLANTS; AND CONFIRMATION BY COURT TRUSTEE OF HIS MOTION TO DISMISS APPEAL 6986.

Weightstill Woods as Court Trustee makes reply:

1. The substance of the counter-suggestions is that this Court of Appeals should be and remain out of step with all the other Circuit Courts of Appeal, and out of step with the spirit of simplicity behind the new Federal rules, and out of step with that uniformity which is necessary for the speedy disposition of litigation in our National Courts.

2. The counter-suggestions entirely fail to meet the issue, that the modes of appeal to this court always have been mutually exclusive; so that this court now has the duty to dismiss either Appeal 6986 or Appeal 7060, or it must overrule a long line of decisions which are cited at page 9 of the motion by the Court Trustee to dismiss Appeal 6986.

3. After the Dickinson case was passed upon by this court, a petition for Writ of Certiorari to review the same, was filed at Washington and is there now pending as cause 386 to the October Term, 1939, for disposition of present question, by the Supreme Court of the United States. It is well known that a legal question of nation wide importance, to be decided for the duration of the present rules of court, will have a more satisfactory disposition by the Supreme Court, when it is presented at the same time upon several different appeals.

4. Paragraphs 2 (c) and 3 (a) of the counter-suggestions collide with paragraph 3 (d) thereof; because if the points raised by the motion to dismiss the appeal are the

same in substance as the matter of the Answer by Court Trustee filed June 17, 1939 to petition for leave to appeal, then the question now before the court was presented to this court of appeals and remains before this court a long time before any record was filed on July 19th 1939.

5. The statement at page 6 of counter-suggestions that there is in fact but one record, is a perversion of truth which defeats the whole purpose and effect of rules 73 and 75, and utterly ignores the motion made by appellants, for a consolidation of two records, and for direction as to printing.

6. Whatever delay there may have been in this cause in the District Court or in this Court, has been occasioned by the efforts of the appellants to bring marginal parties and immaterial matters here before this court, in Appeal 6744 which was dismissed because appellants had no interest, and Appeal 6986 which is sheer duplication and surplusage, producing only confusion.

7. The rules made by the Supreme Court under authority of Congress, most emphatically are a limitation abrogating former rules by this court. Any rules existing or to be made by the Court of Appeals must be consistent with the Supreme Court rules about appeals, forbidding this Court of Appeals to make rules upon the same subject.

8. Federal Rule 73 (a) is the same as Illinois Civil Practice Act Sec. 76. Under that statute the Supreme Court of Illinois has ruled that the notice of appeal must be filed in the trial court within the time prescribed; that making a motion within the time in the appeal court for leave to appeal does not give jurisdiction and that such an attempt to appeal must be dismissed.

Johnson v. Cook County, 368 Ill. 160, 13 N. E. (2d) 169.

The ruling is in point and persuasive on the facts at bar.

9. The statements by appellants that inasmuch as the transcript contains copies of the "original papers", it follows that the hearing is to be upon "original papers"; is a perversion of words and the rules; and is utterly belied by the desire of appellants for direction to have the record printed.

10. Your Honors will notice that everything said and presented in the motion by the Court Trustee to dismiss certain appellants in Appeal 7060, equally applies to the same appellants in Appeal 6986.

11. The Court Trustee strenuously insists that no direction as to printing be made until preliminary motions, as to jurisdiction over appeal and jurisdiction of parties to appeal, have been determined and ended; so that only the lawful appeal and only the true parties will be shown in the printed record, and so that the confusion occasioned by the needless Appeal and by defunct persons who are sought to be parties brought forward by appellants, will be excluded from the essential matter for consideration by this court of the merits of this controversy.

12. Wherefore the Court Trustee confirms his motion to dismiss Appeal 6986; or that your Honors of your own motion, will submit the matter to the Supreme Court at Washington, there to be determined along with the Dickinson case, No. 386 in that Court.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

Received copy of foregoing Reply by Court Trustee to counter-suggestions of appellants Vincent O'Brien and Associates,

By Vincent O' Brien.
Mort D. and Frank Goldberg,
By: Mort D. and Frank Goldberg.

Endorsed: Filed September 26, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-seventh day of September, 1939, there was filed in the office of the Clerk of this Court in cause No. 7060, a Reply by Court Trustee to the answer and counter-suggestions by appellants, etc., which said reply is in the words and figures following, to-wit:

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

October Term, 1939.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.

City National Bank and Trust
Company, and others,
Appellants
vs.
Weightstill Woods, Court Trus-
tee, and others,
Appellees.

No. 7060.

**REPLY BY COURT TRUSTEE TO THE ANSWER AND
COUNTER-SUGGESTIONS BY APPELLANTS: AND
CONFIRMATION BY COURT TRUSTEE OF HIS
MOTION TO DISMISS APPEAL 7060 AS TO CER-
TAIN APPELLANTS.**

The counter-suggestions for supposed appellants, when rightly read fully confirm the accuracy and sufficiency of the motion by the Court Trustee.

The order dated October 21st 1937 which is Exhibit "B" to counter-suggestions, mentions City National Bank & Trust Company only individually; and the order which is Exhibit "A" as set forth in paragraph 5 of counter-suggestions, does the same thing. There is nothing in either order nor in the counter-suggestions, to show any power or right of appellants in any trust capacity, to be parties to the litigation.

Furthermore, if either of said orders or any other portion of the record did show any right of City National or Committee to be parties to this claim No. 9 in any trust capacity, the same would be an attempt to relitigate the

very same question which was presented and definitely decided in said former Appeal 6744. Appellants will not be permitted at this time to bring forward any matter of record or other facts which they could have presented in that former appeal upon the same question.

Insofar as the order dated October 22nd 1937 which is Exhibit "A" to the counter-suggestions, recognizes the existence of a Committee, said order is not dealing with the Committee constituted by the deposit agreement, which here attempts to be appellant. The same counsel who now presents said counter-suggestions, have taken a position in the District Court (in a claim they have recently there filed and now pending and set for October 20th 1939) for disposition before the Special Master in the District Court that said Committee mentioned in Exhibit "A" was constituted by court order July 14th 1939, and is *not the Committee constituted by the deposit agreement which here seeks to be appellant.*

Wherefore, the Court Trustee confirms and urges his motion for dismissal.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Received copy of foregoing Reply by Court Trustee to counter-suggestions of appellants Vincent O'Brien and Associates,

By: Defrees, Buckingham, Jones & Hoffman,
(Vincent O'Brien)

Mort D. and Frank Goldberg,

By: Mort D. Goldberg.

Endorsed: Filed September 27, 1939. Frederick G. Campbell, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

And afterwards, to-wit: On the fourth day of October, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 4, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., et al.,
Appellants,
6986 *vs.*
Weightstill Woods, etc., et al.,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the counter-motion of Weightstill Woods as Court Trustee to dismiss this appeal be, and it is hereby, denied.

And on the same day, to-wit: On the fourth day of October, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 4, 1939.

Court met pursuant to adjournment.

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Otto Kerner, Circuit Judge.

In the Matter of

Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of Chicago, etc., et al.,
Appellants,

7060 *vs.*

Weightstill Woods, etc., et al.,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the motion of Weightstill Woods as Court Trustee to dismiss certain appellants out of these proceedings be, and it is hereby, denied, without prejudice to the right to renew same at the hearing on the merits.

And on the same day, to-wit: On the fourth day of October, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 4, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of

Granada Apartments, Inc.

Debtor.

City National Bank and Trust Company of Chicago, etc., et al.,
6986 *Appellants,*
7060 *v.* **128.**

Weightstill Woods, etc., et al.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause coming on to be heard upon motion of City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metallus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants herein, and the Court being fully advised in the premises, It Is Ordered:

(a) That the appeal of Appellants allowed by this Court and now pending in this Court as the above entitled cause number 6986, and the appeal of Appellants taken to this Court pursuant to notice of appeal heretofore filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, and now pending in

this Court as cause number 7060, be consolidated as cause number 6986;

(b) That the transcript of record now filed with the Clerk of this Court in the above entitled cause number 6986 and the transcript of record now filed with the Clerk of this Court in cause number 7060, be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated;

(c) That the Clerk of this Court be, and he is, directed to cause to be printed only such portions of the single consolidated transcript of record as are designated in "Exhibit A" attached to the said above mentioned motion and made a part thereof, including the printing of a condensed and narrative statement of the transcript of proceedings now filed with the Clerk of this Court in cause number 7060 and of a summary statement of certain exhibits attached to said condensed and narrative statement, in lieu of the printing of said transcript of proceedings and said exhibits in full, and that the said single consolidated transcript of record as so now filed and the said single printed transcript of record shall stand as the transcript of record in both of said appeals as so consolidated, with leave to any party where necessary or desirable to refer by citation to the transcript by page as well as to the printed transcript; and

(d) That Appellants be permitted to file one brief and one reply brief with respect to both appeals as so consolidated, and that each of the Appellees be permitted to file one brief with respect to both appeals as so consolidated, the said respective briefs and reply brief to stand as the briefs and reply briefs in both of said appeals as so consolidated.

And afterwards, to-wit: On the eighth day of November, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, a renewal of counter motion to dismiss appeal 6986, etc., which said renewal of counter motion is in the words and figures following, to-wit:

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939.

No. 6986

In the Matter of
GRANADA APARTMENTS, INC.,
Debtor.

RENEWAL OF COUNTER MOTION TO DISMISS APPEAL 6986.
ANSWER TO MOTION FOR CONSOLIDATION.

WEIGHTSTILL Woods,
As Court Trustee.

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IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939.

No. 6986

In the Matter of
GRANADA APARTMENTS, INC.,
Debtor.
}

**RENEWAL OF COUNTER MOTION TO DISMISS
APPEAL 6986.**

Weightstill Woods as court trustee, presents the following answer and objections to all petitions and motions by Appellants in this court, and respectfully makes motion that appeal 6986 as allowed by this court, be dismissed for want of power and jurisdiction for this court to allow such an appeal.

Respectfully submitted,

**WEIGHTSTILL WOODS,
As Court Trustee.**

ANSWER AND OBJECTIONS TO THE APPEAL
AND TO ALL MOTIONS AND PETITIONS BY
THE APPELLANTS AND SUGGESTIONS FOR
DISMISSAL OF APPEAL.

Weightstill Woods as Court Trustee respectfully says:

1. Your objector is court trustee in proceedings 65811, in the District Court of the United States at Chicago, which suit was filed April 19, 1937, for the reorganization of Granada Apartments, Inc., debtor, an Illinois corporation, and remains pending.
2. That on May 2, 1939 in said proceedings, a decree was entered in said District Court to dispose of an accounting between City National Bank and Trust Company and others, and said Court Trustee for the debtor.
3. That on June 1, 1939, said City National Bank and Trust Company and others, filed in said proceedings in the District Court, their notice of appeal from said decree, and on June 8, 1939, filed their Designation of Points and Praeclipe for Record, in which they stated that said record was to be filed on or before July 9, 1939, as an appeal in the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois; which was done pursuant to Rule 73 established by the Supreme Court to govern appeals, and pursuant to Section 25 of the Chandler Act in force June 22, 1938. More than \$500 is involved in said appeal. On July 7, 1939, appellants secured an order in District Court, extending time until August 19, 1939, for docketing said case on appeal; and within said time did so docket said appeal in this Court of Appeals as case No. 7060.

4. That on June 10, 1939, said Court Trustee also, in the same manner, took an appeal from portions of said decree dated May 2, 1939, by his notice filed in said District Court pursuant to said rules and statute. More than \$500 is involved in said appeal. In due course said appeal was docketed as No. 7061 in the Court of Appeals.

5. That on June 12, 1939 (more than forty days after decree of May 2, 1939), said City National Bank and Trust Company and others, filed as cause 6986 in said United States Circuit Court of Appeals for the Seventh Circuit, their new petition and exhibits, running more than one hundred typewritten pages, seeking to have said Appellate Court by its order grant an additional appeal, upon the same grounds to the same parties and from the same decree dated May 2, 1939, and they expressly stated to Court of Appeals that more than \$500 is involved.

6. That in opposition to said appellate petition filed by City National Bank and others on June 12, 1939, in said Circuit Court of Appeals, your objector as Court Trustee filed an answer, which asked that the prayer of said appellate petition by City National Bank and Trust Company and others be denied.

7. That the Circuit Court of Appeals by order June 22, 1939, allowed an appeal, and later issued a citation.

8. That on June 26, 1939 said appellants in 6986 filed in the District Court, a second praecipe for record mentioning 60 items, in substance a repetition of said praecipe filed June 8, 1939 by them for their prior appeal dated June 1st, and at the end thereof stated that the record in 6986 is to be filed in Court of Appeals on July 22, 1939. Later they sought and obtained an order by Court of

Appeals to enlarge the filing time until September 16, 1939, and filed a record within that time.

9. Objector says that said orders and citation by Circuit Court of Appeals, is an attempt to revive former practice and procedure, which has been abolished by Act of Congress and the rules established by the Supreme Court for the conduct of appeals; and that such attempted revivor is contrary to paramount law. Such revivor would set at naught the years of effort by Congress, the Rules Committee, the Supreme Court, and the profession generally, which have labored to establish simple and uniform procedure for appeals.

10. It is obvious that the allowance of said appeal in said manner by the Court of Appeals, introduces duplication, repetition, surplusage and confusion into the record of said case in the District Court and the Court of Appeals. That is prejudicial to the appeal of right previously taken, and defeats primary rights vested in the Court Trustee. Under Rule 75 only one record can be certified for all appeals from the same order. Here two are certified. Immediate and irreparable damage results to the appeal regularly and rightfully taken by objector the Court Trustee, as No. 7061.

11. Objector states that any attempt that may be made to justify said appellate petitions and orders, by reference to Section 250 of Chandler Act, is unfounded because (1) no intention exists and no effort is made to review any part of said decree dated May 2, 1939, "upon the original papers"; and (2) such an appellate allowance of appeal is not taken "in the same manner" nor "within the time provided for appeals by this act" (Chandler Act, Section 250); and (3) more than the sum of \$500 is involved (Section 24 of Chandler Act).

12. On November 6, 1939 as cause 386 the Supreme Court at Washington granted a writ of certiorari to review the ruling of this court in the Dickinson case (104 F. 2d 771). That ruling was made under circumstances similar to the situation shown by this record.

In the Dickinson case this Court of Appeals took jurisdiction by allowing an appeal, contrary to the rules mentioned below on page 6, and contrary to the decisions of all other circuit courts of appeal, as shown below at page 9. The rules made by the Supreme Court under authority of Congress, most emphatically are a limitation abrogating any inconsistent former rules by this court.

Your Honors will notice that everything said and presented in the motion by the Court Trustee to dismiss certain appellants in Appeal 7060, equally applies to the same appellants in Appeal 6986.

The Court Trustee strenuously insists that printing be not done until preliminary motions, as to jurisdiction over appeal and jurisdiction of parties to appeal, have been determined and ended, so that only the lawful appeal and only the true parties will be shown in the printed record, and so that the confusion occasioned by the needless appeal and by defunct persons who are sought to be parties brought forward by appellants, will be excluded from the essential matter for consideration by this court on the merits of this controversy.

13. Wherefore objector says that all proceedings in 6986 should be dismissed for want of authority and jurisdiction, with costs to be assessed against the appellants.

Respectfully submitted,

W E I G H T S T I L L Woods,
As Court Trustee.

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14. ~~WRIGHTSTILL~~ Woods being sworn, states that he has prepared and has read the foregoing answer and objections, and that the factual statements therein made are true, to the best of his knowledge and belief.

Subscribed and sworn to before me this November 8,
1939.

*Notary Public, Cook County,
Illinois.*

ENLARGED SUGGESTIONS AND AUTHORITIES
IN SUPPORT OF COUNTER MOTION TO DIS-
MISS APPEAL 6986, AND IN SUPPORT OF AN-
SWER AND OBJECTIONS TO CONSOLIDATION.

A. The order by the Supreme Court for General Orders in Bankruptcy in effect since February 13, 1939, provides that said orders:

"shall govern all proceedings then pending to which its provisions are applicable except to the extent that in the opinion of the court its application to such proceedings would not be practicable or would work injustice."

and order "No. 36 Appeals" provides:

"Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including the *rules of civil procedure for the District Courts of the United States*."

B. Federal Court Rule 73, established by the Supreme Court for the District Courts of the United States, provides the manner and time for taking an appeal and for docketing an appeal. This supplants former practice, which is abolished.

The time here sought to be allowed to appellant by this court to September 16, 1939 for filing the transcript, exceeds the 90 days maximum under Rule 73g, after appeal taken in the District Court by appellants on June 1, 1939. *By the Statute only the District Court may enlarge the time.* This Circuit Court of Appeals is not given that power by the statute. Rule 75 provides that there may be only one record, for all appeals from the same order. The appeals now sought to be consolidated are from the same order dated May 2, 1939.

C. Section 250 and 498 of the Chandler Act, are not additional machinery for appeals. (Your Honors so ruled on former appeal between said parties, interpreting similar language of 77B.) *Re Granada*, 104 F. 2d 970 at 973, where this Court of Appeals says:

"The words 'but appeals from orders fixing such allowances may be taken to the circuit court of appeals, and independently of other appeals in the same proceeding and shall be heard summarily' merely designate a class of orders from which an appeal may be taken without in anywise enlarging the class of persons who are entitled to appeal."

(The Supreme Court denied a petition for writ of certiorari on November 6, 1938 as cause No. 469.)

Those sections merely say that appeals about allowances for compensation or reimbursement "shall be heard summarily upon the original papers" and may be taken "independently of other appeals in the same proceeding." It was necessary to use the alternate language "be taken to and allowed by the Circuit Court of Appeals" because Section 24 of the Act allows appeals for less than \$500 only by discretion of the Court of Appeals.

D. At bar we do not have that kind of case. The petitions for appellants all show to this court, that more than \$500 is involved in this court, and show that an appeal of right separately was taken by Notice of Appeal filed June 1, 1939 in the District Court. Under these facts this court lacks jurisdiction to allow an appeal. Those facts exclude such jurisdiction. Also:

1. No intention exists and no effort is made to review any part of the order dated May 2, 1939, "on the original papers."

2. Such an appellate allowance of appeal has not been taken "in the manner" nor "within the time" provided for appeals by Section 250 of the Chandler Act.

3. Only the District Court may extend the time for filing the record on appeal. Rule 73g. It did not enter the order therefor.

F. The petition for appellants filed July 20th (par. 8) speaks of "physical impossibility and unnecessary duplication." Your objector pointed to that fact by answers filed June 17, 1939 to the first petition here for this appeal. Repetition, surplusage and confusion are the result of the revival of the old double procedure.

G. Furthermore all the old uncertainty about appeals will be revived, if this court allows appeals when \$500 or more is involved. All the work done by Congress, by the Supreme Court, by the Rules Committee, and by the profession for many years, seeking to simplify and unify appellate procedure, would be swept away by such revivior of former practice.

H. Objector submits that the order by Court of Appeals dated June 22, 1939, for an allowance of appeal 6986, is void for want of authority. It conflicts with the paramount law. That order should be vacated. The order dated July 21, 1939, for filing time should also be vacated. All the petitions by appellants to this court should be denied. The citation should be quashed. The petition to this court for an appeal, dated June 12, 1939, should be dismissed for want of jurisdiction in this court to entertain the same under existing law applicable to this case. The order dated October 4 should be vacated.

I. In the alternative objector suggests that this Court of Appeals should submit the question of validity of appeal 6986 to the Supreme Court at Washington, as a preliminary question before judgment, under Rule 39 of the Supreme Court. The public interest will be promoted by prompt settlement in that court of this question of the jurisdiction of this court to allow appeals.

J. Objector asks that the matter of printing the record be deferred until the matter of jurisdiction to allow appeals be first finally determined; and that objector

have leave to examine the record fully thereafter, and to submit his suggestions as to matter for printing.

THE WRONG MANNER OF APPEAL WILL BE DISMISSED.

Union Trust Company of Maryland v. Townsend, 101 F. 2d 903 at 914, C. C. A. 4.
Bender v. Davis, 365 Ill. 389.

Federal Rule 73 (a) is the same as Illinois Civil Practice Act Sec. 76. Under that statute the Supreme Court of Illinois has ruled that the notice of appeal must be filed in the trial court within the time prescribed; that making a motion within the time in the appeal court for leave to appeal does not give jurisdiction and that such an attempt to appeal must be dismissed. *Johnson v. Cook County*, 368 Ill. 160, 13 N. E. (2d) 169. The ruling is in point and persuasive on the facts at bar.

THE METHODS OF REVIEW ARE MUTUALLY EXCLUSIVE.

Arnold v. Equitable Life Assurance Society and Three Other Cases, C. C. A. 7, 100 F. 2d 621 at 622.

England v. Ducasse (C. C. A. 9, Bankruptcy Law Service 51828).

Wayne U. G. Co. v. Owens I. G. Co., C. C. A. 4, 83 F. 2d 98, 84 Fed. 2d 965.

F. P. Newport Corporation, 93 F. 2d 630 at 633, C. C. A. 9.

London v. O'Dougherty, 102 F. 2d 524 at 525, C. C. A. 2.

Winton Shirt Corporation, 104 F. 2d 777 at 779, C. C. A. 3.

3 Ohlinger Federal Practice 949, 953, 956.

Finletter Reorganizations, page 611.

Bender v. Davis, 365 Ill. 389.

Francke v. Eadie, 301 Ill. App. 254, 259.

The one opposing decision should be disregarded, for the additional reason that the Supreme Court granted a writ of certiorari as cause No. 386 on November 6, 1939. (*Albert Dickinson Co.*, 104 F. 2d 771 at 779.)

Received copy of the foregoing counter motion, answer, objections, authorities and suggestions.

VINCENT O'BRIEN AND ASSOCIATES,

By.....

MORT D. AND FRANK GOLDBERG,

By.....

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Endorsed: Filed November 8, 1939. Frederick G. Campbell, Clerk.

And on the same day, to wit: On the eighth day of November, 1939, there was filed in the Office of the Clerk of this Court in Cause No. 7060, a Renewal of Motion by Court Trustee, which is in the words and figures following, to wit:

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IN THE

**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

OCTOBER TERM, 1939.

In the Matter of		Debtor.	No. 7080.
GRANADA APARTMENTS, INC., a Corporation,			
CITY NATIONAL BANK AND TRUST COMPANY, and others,	Appellants, vs. Appellees.		
WEIGHTSTILL WOODS, Court Trustee, and others,			

RENEWAL OF MOTION BY COURT TRUSTEE.

Weightstill Woods as Court Trustee makes motion again that certain appellants

City National Bank and Trust Company of Chicago
*as Successor Trustee under indenture securing
Granada Apartments First Mortgage Bonds;*

Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, *as Members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds,*

be dismissed out of said proceedings, and that said appeal be dismissed as to them by order of this court;

For reasons set forth in suggestions herewith.

The Court Trustee asks further time to consider the condensed Narrative Statement of the Evidence, and leave thereafter to file his suggestions as to matter for printing.

Respectfully submitted,

WEIGHTSTILL Woods,
as Court Trustee.

ENLARGED SUGGESTIONS BY THE COURT
TRUSTEE IN SUPPORT OF RENEWAL OF
MOTION TO DISMISS AS TO CERTAIN APPEL-
LANTS.

1. Named appellants (successor trustee and Committee) were in this court on former appeal, case 6744, which is reported 104 F. (2d) 970, suing this Court Trustee.

Since the original motion was made, appellants have sought and have been denied a writ of certiorari at Washington. That court refused to review case 6744.

2. That appeal was dismissed because named appellants are defunct and no longer have legal existence.

3. By opinion in that appeal Your Honors rule at page 972:

"It would seem, on general principles, that neither the bank trustee, nor the Committee, had any interest in the proceedings after the plan of reorganization, approved by the court, had been consummated, with the exception of the former's claim No. 9, which we shall assume was pending at the time of the entry of the order appealed from. The deed of trust from which the former received its authority, and the bonds deposited with the latter and from which it received its authority, were, as heretofore recited, cancelled and delivered to the reorganized company and thus the basis upon which both appellants participated in the reorganization proceedings were destroyed."

That ruling by Your Honors was based upon your finding in the same appeal, between these same parties as follows:

"The new corporation, Granada Apartments Hotel Corporation, was issued a charter by the State of Illinois October 30, 1937, and on November 1, 1937, the trustee executed and delivered to it a deed to the real estate and an assignment of all the personal

property of the debtor, as well as possession, management, and control of the debtor's property and affairs, excepting only cash in bank and rights of action as directed by the court in its order of October 22, 1937. In conformity with the plan, the bondholders and other creditors of the debtor were issued securities of the new corporation in lieu of those of the debtor. The original trust deed by which the trust company received its authority, as well as the committee representing bondholders whose bonds were secured thereby, was cancelled and released of record in the Recorder's office of Cook County, Illinois, on February 10, 1938, surrendered to the court trustee, and by him delivered to the new corporation."

4. A petition for writ of certiorari was denied by the Supreme Court at Washington as cause 469, on November 6, 1939, refusing to review said appeal 6744.

5. Thereby it is adjudicated on former appeal, that said bank trustee and committee are defunct and have no legal existence since Granada plan was confirmed July 14, 1937. All shown by records of this court.

6. Wherefore the court trustee respectfully asks for an order of dismissal pursuant to the motion herewith.

And prays a reasonable time for examination of record before printing is done.

Respectfully submitted,

WEIGHTSTILL Woods,
as Court Trustee.

Received copy of foregoing motion and suggestions.

VINCENT O'BRIEN AND ASSOCIATES,

By.....

MORT D. AND FRANK GOLDBERG,

By.....

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And afterwards, to-wit: On the sixteenth day of November, 1939, there was filed in the office of the Clerk of this Court, in cause No. 6986, the Answer and response of City National Bank & Trust Co. to Court Trustee's renewed motions, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939.

**In the Matter of
Granada Apartments, Inc., a cor-
poration,**

Debtor.

**City National Bank and Trust Com-
pany of Chicago, Individually
and as Trustee, etc., et al.,**

Appellants,

**vs.
Weightstill Woods, Court Trustee,
et al.,**

Appellees.

No. 6986.

**THE ANSWER AND RESPONSE OF CITY NATIONAL
BANK AND TRUST COMPANY, INDIVIDUALLY
AND AS TRUSTEE, THE COMMITTEE, AND COUN-
SEL TO THE COURT TRUSTEE'S RENEWED MO-
TIONS.**

The Court Trustee in Bankruptcy accuses us of a desire to confuse the Court as to what the Granada litigation is about, and says that in order to create that confusion we have bombarded the Court with a barrage of motions. We do not deny that there has been a barrage of motions, but insist that we, as well as the Court, have been on the receiving end.

In order to be sure that there does not exist in the mind of the Court that confusion of which we are accused of having the desire to create, we believe it would be helpful

to the Court if we filed in each Granada case here pending this one comprehensive answer to the Trustee's three most recent motions and in that answer review the various motions made and show their purpose.

We further suggest that if, after reading our answer, any confusion exists in the Court's mind as to the purpose of the motions we have made or as to the propriety of granting those motions, the Court grant oral argument pursuant to its Rule 19.

On May 2, 1939, a decree was entered below which disposed of issues which arose on the final report and account of City National Bank and Trust Company of Chicago, as Indenture Trustee, the claim of City National Bank and Trust Company of Chicago on its own behalf, the petitions for fees and expenses of administration by the Committee and its counsel, the objections of the Court Trustee to all of the foregoing, and upon the counterclaim of the Court Trustee. All of the issues so raised were heard at the same time.

The Indenture Trustee, the Committee, and its counsel perfected an appeal *as of right* from that decree, even as to the portion relating to fees and expenses of administration; for it was felt that under existing authorities that was the mode which was to be followed.*

Within the time allowed for the perfection of appeal *by leave*, this Court held in the Dickinson case (104 F^{2d}. 771) that appeals from orders granting or denying fee allowances would not lie as a matter of right. To comply with that ruling, and not, as the Court Trustee indicates, for the purpose of complicating the matter or confusing the Court, we filed a petition for leave to appeal, which was opposed by the Court Trustee but which was nevertheless allowed.

Our appeal taken *as of right* is here docketed as No. 7060, and the one perfected by leave of this Court is here docketed as No. 6986.

In relation to No. 7060 we filed with the Clerk of the District Court a designation of record which, together with an additional designation filed by the Court Trustee, specified the entire record of the proceedings below. Pursuant to those designations the Clerk of the District Court prepared and there was filed here the complete record. As

* *London v. O'Dougherty*, 102 F. (2d) 524 (C. C. A. 2) Mar. 18, 1939.

to appeal 6986 we filed a praecipe with the Clerk of the District Court for the same complete record of the proceedings below which we had requested for purposes of appeal in 7060.

So that it would not be necessary for the same record to be printed twice, we moved this Court to consolidate those two appeals,—the one record to stand in both appeals. Having in mind that the rules of this Court had not as yet been revised in respect of the Rules of Civil Procedure then recently adopted, particularly in respect of requirements as to what, if any, portion of the record would be required to be printed, we asked the Court in the same motion to excuse the printing of certain portions of the record, and in respect of the portion which was to be printed we submitted a narrative statement of the evidence calculated to effect further savings in printing expense. So that the rights of none of the parties would be prejudiced, we asked further that all parties have leave in their briefs to refer both to the record returned by the Clerk of the District Court and also to the printed transcript which was to be so prepared, the main record as well as that printed transcript to stand as the record in the two appeals Nos. 6986 and 7060. It was of course considered that those motions in respect of the record and the printing thereof could not be entertained unless the two appeals Nos. 6986 and 7060 were first consolidated.

The Court Trustee objected in writing to the allowance of any or either of those motions, and in addition, asked that an indeterminate time be granted him within which to examine and file suggestions in respect of the narrative statement which we had so submitted to the Court, a copy of which had been given to the Court Trustee with the notice of our motion. With his objections the Court Trustee filed two affirmative motions, one to dismiss our appeal No. 6986 because he said that the Dickinson case was not good law and that the Court was without jurisdiction to grant leave to appeal; the other to dismiss City National Bank and Trust Company of Chicago, as Trustee, and the Committee as parties appellant in appeal No. 7060.

His motion to dismiss appeal No. 6986 was denied *absolutely*. His motion to dismiss the aforesaid parties to appeal No. 7060 was denied "without prejudice to the right to renew same at the hearing on the merits." Those denials were by order of this Court entered October 4, 1939,

which also allowed our motion to consolidate our appeals Nos. 6986 and 7060 and our motions in respect of the record and portions thereof to be printed, including the narrative statement aforesaid.

Thereupon, the Clerk of this Court, pursuant to the rules, called upon us to deposit the estimated cost of printing the record, and such deposit was duly made and the record has been printed and filed.

In the meantime, the Court Trustee, also feeling aggrieved by the same order of May 2, 1939, from which we appealed, perfected as of right a separate appeal therefrom, which is docketed here as No. 7061. The Court Trustee, *originally* having in mind that there was to be but one record in relation to his appeal and ours, filed with the Clerk of the District Court what he termed "A Prae-*cipe* for Additional Record." (See Rec. 510) In and by his praecipe for additional record he requested the Clerk of the District Court to prepare a transcript of record for purposes of his appeal, and to include therein all items which we had designated for our appeals (7060 and 6986), as well as certain additional items mentioned in his praecipe.

Accordingly, the Clerk of the District Court incorporated in one and the same record all items designated not only in our praecipe but in the praecope for additional record filed by the Court Trustee, which record was, as above stated, filed with the Clerk of this Court.

Upon the filing of the record it would be the duty of the Clerk of this Court, in the absence of any order to the contrary, to print up separately in each appeal such part of the record as had been called for by the praecipes or designations in each case—which was in each instance substantially the *entire* record, inclusive of the evidence.

In our two appeals, 7060 and 6986, the necessity for double printing of the record was dispensed with by order of this Court, on our motion.

In Court Trustee's appeal, No. 7061, the Court Trustee failed to make any motion to dispense with the necessity of again printing the entire record for his appeal.

However, the Clerk of this Court, feeling that there would be unnecessary duplication if he printed an entire separate record for appeal 7061, as designated by the Court Trustee's praecipe, conferred with both counsel separately and was informed by our office that we saw no reason for duplication in printing unless Mr. Woods did,

and that we would later ask the Court to consolidate the causes so that our printed record, together with the additional items called for in the Court Trustee's additional praecipe aforesaid, and separately printed (as hereinafter stated) might stand as the printed record in all three appeals.

There has been printed and filed in appeal 7061 only the findings and decree of the lower court and a few miscellaneous items which the Court Trustee had requested in addition to the record which we had designated and not the entire record called for by the Court Trustee's praecipe in connection with his appeal.

When the Court Trust failed to move to consolidate his appeal with ours, we filed our motion for consolidation, so that the record called for by the Court Trustee's praecipe in his own appeal (7061) would be before the Court in that appeal. Otherwise the only record which would be before the Court for consideration on the Court Trustee's appeal would be the wholly inadequate short printed record now there on file which was printed by the Clerk under the circumstances above mentioned.

Our other purpose in presenting our pending motion was to have the Court direct and limit the number of briefs to be filed in respect of appeals 6986, 7060, and 7061 and to fix the order of their filing with particular reference as to who should open and close.

Such was the state of the record in this court when the Court Trustee filed his response and objections to our motion to consolidate his appeal 7061 with our appeals and to fix the number of briefs and the order of filing. He also renewed his motions to dismiss our appeal 6986 and also appeal 7060 as to certain parties. The several motions in this paragraph mentioned are now pending for determination.

We shall first discuss the Trustee's objections to our motion.

Why is it that after designating the complete record in his own appeal (on which designation we were entitled to and did rely), the Court Trustee is now anxious to prevent consolidation so that the complete record so designated by him shall not in fact be before the Court in his appeal 7061? The reason is obvious. As the Clerk, after conference with us and Mr. Woods, printed only the findings of fact and conclusions of law in which the Court found that City National Bank and Trust Company was

liable for approximately \$100,000, Mr. Woods wants to be in a position to say that the printed record now on file in 7061 is the entire record in that case, and that, since it does not include the evidence on which those findings are based, the findings so made must stand, and accordingly that the Court erred in failing to enter a decree against the City National for that amount.

That this is the present intention of the Court Trustee is best evidenced by paragraph 8 of his response to our motion, where he says:

"City National Bank and Trust Company, having failed to designate in the District Court, the evidence with reference to appeal 7061, as required by Rule 75 of the Federal Rules of Civil Procedure, now seeks to have this court change the record in appeal 7061, and allow them in this court to specify what the record shall be in 7061, (by addition of the evidence) long after the appeal record is sent here, and long after the record is printed and on file in this Court." —meaning the meager portion printed by the Clerk under the circumstances above outlined.

75(a) of the Rules of Civil Procedure provides that the party taking the appeal shall file a designation of the portions of the record to be contained on appeal and that within ten days thereafter any other party to the appeal may serve and file a designation of additional portions of the record which he desires to have included. This rule was in full force and effect when both appeals 7060 and 7061 were taken. When the Court Trustee, for purposes of his appeal 7061, filed his designation of record pursuant to requirements of Rule 75(a) and designated the entire record, inclusive of the evidence, which we had called for on our praecipe in 7060, there was no occasion for us to file an additional praecipe for record in his appeal, and the Trustee's claim that there was such occasion is a direct misrepresentation to the Court of what was contained in his own praecipe, as mere inspection of the record will disclose.

If the Court Trustee contends that his praecipe for record filed in relation to appeal 7061 did not include by reference the same items as we specified in our praecipe in relation to appeal 7060 and that his praecipe is confined only to the nine additional items therein expressly specified, how does it happen that the findings of fact and conclusions of law filed May 2, 1939 and the decree appealed

from entered on the same day appear in his printed transcript but not amongst the nine items so specified in his *praecipe*?

The remaining point made by the Court Trustee in opposition to our motion is contained in paragraph 7 of his response and is that the appeals are not alike and that they therefore should not be consolidated.

The fact is that both the Court Trustee and ourselves are attacking the same decree. We predicate our attack on the decree on the ground that the evidence does not support the Court's findings of fact. We therefore, directly attack those findings. The Court Trustee claims that the evidence does support the findings of fact but that the decree is unwarranted in view of those findings. The Court cannot determine the questions presented in either appeal without reviewing the underlying evidence. It follows that the appeals in essence involve the same subject matter.

Not only is it necessary to get the record in shape in appeal 7061, but it is also desirable that there be some direction by the Court limiting the number of briefs to be filed by each party so as to avoid unnecessary duplication by reason of the several appeals, and that the Court also indicate who is to file the first brief and the reply brief. The balance of our pending motion is directed to these matters.

We think further argument unnecessary to establish that but one set and not two sets of briefs should be filed by each of the parties in the event that appeal No. 7061 is consolidated with No. 6986 and No. 7060, which latter two are already consolidated. The question remains as to who in that event should open and close as to briefs and on oral argument.

The rules of this Court are silent as to the opening and closing in the matter of cross appeals, but an analogy, which is perhaps controlling, is to be found in Rule 18 of this Court having to do with the opening and closing on oral arguments. In that rule the Court states that whoever was plaintiff below shall have the opening and closing and the same rule should be applied to the briefs since the proceedings in question were initiated by the report and account of City National Bank and Trust Company of Chicago, as Indenture Trustee, and by its affirmative claim, and also by the original petitions of the Committee and counsel for allowance of administrative fees and expenses.

Those parties who are appellants here in the matter of appeals 6986 and 7060 were the plaintiffs below within the meaning of the rule, notwithstanding that the Court Trustee had occasion to file not only objections but a counter-claim.

We now come to the Court Trustee's renewed motion to dismiss appeal 6986. At the outset we are compelled to call the Court's attention to the Trustee's representation under oath. He tells the Court that his original motion for the same purpose was denied with leave to renew it as he now does.

The fact is that the motion was denied absolutely and without any right of renewal at any time. (See order of this Court dated October 4, 1939.)

We assume that there is special significance to be attached to an order which denies a motion to dismiss absolutely, for in some instances the Court's denial is expressly without prejudice to renew the motion at some later time. If that is not true, the number of times that the same motion may be presented is to be limited only by the Court's patience and no inconsiderable time is required on the part of counsel in answering and re-answering the same matter.

Nor does the motion as renewed contain any new matter meriting consideration. It is predicated on the Court Trustee's averment therein contained that the United States Supreme Court has granted a writ of certiorari to review the ruling of this Court in the *Dickinson* case, 104 F. (2d) 771.

Even granting that this Court were willing to reconsider this motion to dismiss, heretofore absolutely denied, we suggest that the mere taking of the *Dickinson* case on certiorari does not work a reversal of the ruling of this Court, and that until and unless the Supreme Court reverses the order of this Court in the *Dickinson* case, that case stands as the law of this Circuit.

Moreover, the Court Trustee's motion to dismiss the appeal by leave is frivolous. If the appeal had been perfected merely by the method of appeal by leave, which was done in the *Dickinson* case, there might be some merit in presenting the dismissal motion. Here, however, the appeal was perfected as of right and by leave. Regardless of which was the proper method for raising all of the questions now before the Court, they are, in any event, here for decision. If the Supreme Court, instead of merely

granting certiorari in the Dickinson case, had already decided that the appeal by leave where fee questions are raised is not the proper method of appeal but that appeal lies only as of right, even then the dismissal of our appeal by leave would have no effect upon the questions now before the Court and would in no wise affect the right or the duty of the Court to determine every issue that has been here presented.

In response to the renewed motion of the Court Trustee to dismiss from appeal 7060 the Indenture Trustee and the Committee, we call the Court's attention to the answer which we filed to the Court Trustee's original motion for that purpose. And we remind the Court that that motion was denied without prejudice to the Court Trustee's right to renew it, *not now but at the hearing on the merits*. His representation under oath to the contrary is a deliberate attempt to deceive the Court.

There is nothing set up in his renewed motion not contained in his original motion except that the petition for certiorari to review the decision of this Court reported in 104 F. (2d) 970 was denied by the United States Supreme Court on November 6, 1939.

That being so, we of course admit that the decision of this Court in that case stands as the law in this Circuit.

But the only import of that decision was that the right of City National Bank and Trust Company, as Trustee, and of the Committee to continue to act in a representative capacity on behalf of the bondholders had ceased. This does not mean that the Bank and the Committee may not continue to act on their own behalf in respect of matters which affect their own individual interests, which are the only matters involved in these appeals, namely, the allowance of the individual claim of the Trustee and of the petitions of the Committee and its counsel for administrative fees and expenses and the counterclaim of the Court Trustee which is directed against City National Bank and Trust Company individually in an effort to surcharge its account. In respect of none of these matters can it be said that either the Committee or the Bank is purporting to act on behalf of the bondholders.

In conclusion, we submit that such motions as we have made have been made of necessity and for the purpose of economy and simplicity in presenting the issues raised by the several appeals; while every motion made by the Court Trustee and every answer filed by him to our mo-

tions have been made for the purpose of preventing a hearing and determination of the whole matter on the merits, by resort to technical errors alleged to have been made by us in perfecting the appeals and getting the proper record before the Court.

We submit that we have established that these alleged errors do not exist and that our motion for consolidation, and to limit the number of briefs and to fix the time and order of the filing thereof should be allowed and that the Court Trustee's renewed motions for dismissal should be definitely and finally denied.

Respectfully submitted,

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,

*Attorneys for City National Bank
and Trust Company of Chicago,
individually and as Successor
Trustee under indenture securing
Granada Apartments First Mort-
gage Bonds; Albert J. Peterson,
Lewis W. Riddle, William G.
Sturm, and E. A. Kilmer, mem-
bers of the Protective Committee
acting under the Deposit Agree-
ment dated April 25, 1933 with re-
spect to said Bonds; and George
T. Buckingham, Donald Defrees,
Don Kenneth Jones, Matthew
Mills, Stephen E. Hurley, Kenneth
M. Fiske, Vincent O'Brien, and
Metellus Thomson, co-partners do-
ing business as Defrees, Bucking-
ham, Jones & Hoffman,*

Appellants.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for Appellants.

105 South La Salle Street,
Chicago, Illinois.

Endorsed: Filed November 16, 1939. Frederick G.
Campbell, Clerk.

And afterwards, to-wit: On the twenty-seventh day of November, 1939, the following further proceedings were had and entered of record, to-wit:

Monday, November 27, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank & Trust Company of Chicago, etc., *et al.*,
Appellants,

6986
7060 *vs.*

Weightstill Woods, etc., *et al.*,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court the renewed countermotion of appellee Weightstill Woods, as Court Trustee, to dismiss appeal No. 6986, be, and it is hereby, denied.

It is further ordered that the renewed motion of appellee Weightstill Woods, as Court Trustee, to dismiss appeal No. 7060 as to certain appellants be, and it is hereby, denied.

It is further ordered that these consolidated appeals be heard on the same day as causes Nos. 7061 and 7086, that separate briefs be filed in each of the three causes, and that not more than three hours be allowed for the hearing of the three causes, such time to be divided among counsel as they may themselves determine.

And afterwards, to-wit: On the twenty-third day of February, 1940, the following further proceedings were had and entered of record, to-wit:

Friday, February 23, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust
Company of Chicago, etc., et al.,
Appellants,

6986

7060 vs.

Weightstill Woods, etc., et al.,
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Vincent O'Brien, counsel for appellants, and by Mr. Weightstill Woods, counsel for appellees, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the twenty-sixth day of March, 1940, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

October Term, 1939, January Session, 1940.

In the Matter of

GRANADA APARTMENTS, INC.,
a Corporation,

Debtor.

Nos. 6986 and 7060.

CITY NATIONAL BANK & TRUST COMPANY OF CHICAGO, Etc., et al;

Appellants,

vs.

WEIGHTSTILL WOODS, Court Trustee,
et al.,

Appellees.

No. 7061.

WEIGHTSTILL WOODS, Court Trustee,
Appellant,

vs.

CITY NATIONAL BANK AND TRUST CO.
OF CHICAGO, et al.,

Appellees.

No. 7186.

GRANADA APARTMENTS HOTEL CORPORATION, a Corporation, and WEIGHTSTILL WOODS, Court Trustee,

Appellants,

vs.

INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA, et al.,

Appellees.

No. 7086.

WEIGHTSTILL WOODS, Court Trustee,
Appellant,

vs.

ARLINGTON, INC., a Corporation,
Appellee.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

March 26, 1940.

Before SPARKS, MAJOR and TREANOR, *Circuit Judges.*
MAJOR, *Circuit Judge.* These appeals are from orders

in a corporate reorganization proceeding (77B) and are so closely related that they may appropriately be considered and disposed of in one opinion.

Granada Hotel Corporation (predecessor in title of the debtor) was organized in 1924, and its bonds marketed by Chicago Trust Company as the house of issue. On September 1, 1928, the indebtedness was refinanced and a trust deed in the nature of a mortgage made to Chicago Trust Company, as trustee, to secure payment of first mortgage bonds of \$525,000, \$300,000 of which were underwritten by Cody Trust Company, and \$200,000 by Chicago Trust Company. Another trust deed was made to Chicago Trust Company to secure a second bond issue in the amount of \$360,000. The premises described in the trust deed consisted of a furnished apartment hotel, operated as such. Since 1928 there have been numerous successor trustees and much litigation. The hearing in the court below, which culminated in the orders complained of, covered all this period and apparently included a review of the acts and doings of all persons, corporations and attorneys, as well as the various matters of litigation had concerning the property.

The record is of such volume that we find it difficult to make even a summary of the situation in an opinion of reasonable length. It is almost as difficult to obtain a clear picture of the involved issues. Appeals 6986 and 7060 are the same, the former allowed by the District Court and the latter by this court. The appellants in these appeals, in addition to City National Bank and Trust Company of Chicago, (herein referred to as "City National") are a bondholders' protective committee (herein referred to as the "committee") consisting of Peterson, Riddle, Sturm and Kilmer, and the legal firm of Defrees, Buckingham, Jones and Hoffman.

Subsequent to the approval of a plan of reorganization, submitted by the committee, City National, on September 14, 1937, filed its proof of claim in the amount of \$10,849.90, alleging said indebtedness was established by decree of the Superior Court of Cook County, Illinois, entered December 18, 1936, in a certain foreclosure proceeding, in which City National was complainant and the debtor corporation, defendant. The itemized statement of the claim as fixed and allowed by the Superior Court, was as follows: Fees of City National as Trustee, \$2570;

solicitor's fees for City National, \$8250; and court reporter's fees, \$39.90. At the time the debtor's property was turned over to the court trustee, the City National had in its possession the sum of \$1608.56, which it applied to its claim, thereby reducing the same to the sum of \$9241.34 as shown by the amended claim. August 30, 1937, City National filed a report of its stewardship as trustee, and on September 9, 1937, the court trustee filed objections to the report and claim as filed by City National. Thus are raised the more important issues of the case. The objections are in the nature of a counter-claim, charging divers acts of mismanagement and asserting that City National was entitled to no compensation either for itself or its attorneys. Answer was filed to this counter-claim, denying specifically its numerous allegations.

The committee and the attorneys, on September 14, 1937, filed their claims for reasonable compensation and fees, to which the court trustee objected. In the decree appealed from, entered May 22, 1939, the court disallowed in toto all claims made by City National, the committee and the attorneys. The action of the court in this respect is here involved. As stated, the investigation, inquiry, or whatever it may be called, upon the issues thus made, assumed a wide range, including everything which transpired in connection with the debtor property from the time of the first bond issue down to the hearing. Although we are convinced that much of what was heard and considered was irrelevant and immaterial to the issues before the court, it seems important to relate some of the more salient matters.

On July 25, 1931, Chicago Trust Company, the original indenture trustee, consolidated with Central Trust Company of Illinois to form Central Republic Bank and Trust Company, which later changed its name to Central Republic Trust Company, and, by the terms of the trust deed thereupon became trustee. August 7, 1933, the first mortgage being in default, Central Republic Trust Company filed a cross-complaint to foreclose a junior mortgage in the Superior Court of Cook County, Illinois, in which William A. Thuma was plaintiff and Granada Apartments, Inc., and all others having any interest in the mortgage property, were defendants. In those proceedings, Chicago Title and Trust Company was ap-

pointed and acted as receiver. In the meantime, and on November 20, 1934, a receiver was appointed for Central Republic Trust Company by the Auditor of Public Accounts of the State of Illinois. The Chicago Title and Trust Company, named as successor trustee to the Central Republic Trust Company, refused to accept and, thereupon, on January 3, 1935, City National was appointed successor trustee under said trust deed by the Superior Court of Cook County in said foreclosure proceedings, and duly accepted such appointment.

Whereupon, the City National was substituted in the place of Central Republic Trust Company as cross-complainant in the mortgage foreclosure. On February 11, 1935, the receiver of the Central Republic Trust Company filed his financial report, whereupon it was ordered to pay the cash on hand, in the sum of \$9995.46 to City National, and such receiver and Central Republic Trust Company were discharged from any and all liability under and in connection with said trust deed. The mortgage foreclosure in the state court pursued the usual course, and after a report by the Master, the court, on December 18, 1936, entered a decree of sale in which was found the amount due upon the indebtedness secured by the trust deed, including the fees for City National as alleged in its claim now before us.

City National continued in possession of debtor's property until the 17th day of May, 1937, when it surrendered possession to the court trustee (appellee). Subsequently, as stated heretofore, City National filed a report showing receipts and disbursements from the time of its appointment as trustee in the Superior Court of Cook County to the time it surrendered possession.

The court entered an extensive resumé of the history of the debtor property, covering 24 pages of the record, under what is designated as "Findings of Fact and Conclusions of Law," in which appellants and others are charged with having knowingly participated in a conspiracy to defraud the bondholders. The findings are of such serious character that we have read and reread them, and searched the record with a view of endeavoring to ascertain if they find support. Although the result of this litigation must necessarily depend upon such determination, we have received only meager assistance from the court trustee. Instead of giving us references

to the record which support the findings, the trustee is content to consume 28 pages of his brief with a verbatim copy of such findings. He then assumes that they are supported, and predicates his argument upon such assumption. A good portion of his argument is devoted to the Statute of Gloucester, with supporting authorities, in an effort to demonstrate that the court trustee is entitled to recover from City National in triple amount for all damages and waste for which the latter was found liable. It is argued that the District Court having found the City National liable for damages in the sum of \$79,930.93, that, therefore, it is liable for three times that sum, viz.: \$239,792.79. The remoteness of this argument is apparent. It is an attempt to cross the bridge long before it is reached. The first thing we must determine is whether the findings find any substantial support in the record, and so we revert to that phase of the situation. It seems necessary to copy Finding 55, which we set forth in a footnote.¹

We shall discuss briefly each of these items, which will

I. 55. The evidence shows that the following items are due from City National Bank and Trust Company to Debtor Estate and the Court Trustee, together with interest at five per centum on each item from the date of its accrual and that the accounting by City National should be surcharged therewith:

I. All costs of this proceeding including trial counsel fees for Court Trustee and cost of special Auditing and Engineering services, expense for exhibits and witness fees, and extra services of the Court Trustee caused to the Debtor Estate, in such sums as the Court may determine upon hearing as to same.

II. Restoration of incinerator (waste and neglect) August 1937 \$ 500.00

III. City National without making a substantial adverse claim, refused to pay over cash funds pursuant to Court order and demand made by the Court Trustee May 1937..... \$ 1990.86

IV. Without authority City National consented to and made wrongful payment from rentals upon receiver's certificate..... \$ 7500.00
And also cause payments to Pick successor August 1933..... \$13000.00

V. City National charged for management fees as trustee in possession; never earned, before May 1937..... \$11365.42

VI. Without authority City National paid court costs, fees and legal expenses never earned, February 1936..... \$10186.65

VII. City National paid valet commissions to Arlington, earned by Granada rental space, before April 1937..... \$ 250.00

VIII. City National without authority willfully reduced and failed to collect or pay over rentals due from Arlington for inter-hotel services from January 1, 1933..... \$19170.00

IX. City National neglected and failed to seek tenants for ballroom, solarium, writing room and director's room, all space adjacent to lobby..... \$10988.00

X. Needless tax penalties (admitted by City National petition) resulting from failure to apply funds to taxes, before May 1937... \$ 5000.00

require some statement of facts not related heretofore. In connection therewith, we think it important to keep in mind that City National served only as trustee from January 3, 1935, to May 17, 1937, and so far as we are able to ascertain, prior to the time of this appointment and its participation in the state foreclosure proceeding, had no control over and, we think, no connection with debtor's property. It is true that the committee, organized in 1933, one of whose members was an officer of the City National, had their office and performed their functions in quarters provided by the City National, and employed the services of a division of the City National, whose business was to furnish service to committees representing bondholders. While there may be valid criticism of the relation thus shown, we do not see how that, in itself, could affect the legal duties or obligations of City National, and certainly not prior to the time the latter assumed the duties and responsibilities as trustee.

We shall now consider each of the items in the finding set forth in footnote 1. It is apparent that Item I is dependent upon the result of these appeals.

Item II charged to City National, has to do with an incinerator installed in debtor's property by the court trustee. We find no evidence that the necessity for this installation was the result of negligence or mismanagement on the part of City National.

Item III, in the amount of \$1990.86, includes a number of items, the largest of which is \$1608.56. In the proceeding in the Superior Court of Cook County, referred to heretofore, an accounting was had between City National and the debtor. By the decree entered in that court December 18, 1936, the account was adjudicated, and the City National was expressly authorized to apply said sum upon the indebtedness due it. It appears to be the position of the court trustee that the order of the Superior Court was void. We conclude to the contrary and, that City National properly applied this amount to its claim as authorized by that court. The balance of Item III amounts to \$382.30, and is composed of a number of small items set aside by City National for the payment of taxes and other obligations for which it contends its liability had become fixed. We do not think it necessary to go into each one of these small items. If the items making up this sum of \$382.30 have not now been disbursed, then

it is our conclusion that such item should be paid over to the court trustee, but if they have been disbursed by City National, then there is no liability to the court trustee.

Item IV. The amounts of \$13,000 and \$7,500 charged to City National in this item were paid in conformity with the decree of the Superior Court. In fact, the former was disbursed in August, 1933 by Chicago Title and Trust Company, the then receiver. At this point, it seems pertinent to make brief reference to a matter which concerns this disbursement, and which the court trustee describes as the "heart of the present controversy." When the first bonds were issued in 1924, and again when reissued in 1928, it is contended, but disputed that those responsible for their issuance, in a prospectus issued by them, represented to the purchasers of such bonds that the furniture and fixtures of the debtor property were included in the mortgage as security. Assuming such misrepresentation was made, we think it is wholly immaterial to the issue here involved. How or in what manner the City National could be chargeable with a fraud committed at that early date, with which they had no connection or concern, we are not able to ascertain. The fact remains that the owner of the debtor property purchased the furniture and fixtures from Albert Pick and Company upon the security of a chattel mortgage. The validity of this chattel mortgage was in dispute and its foreclosure resisted. The litigation with reference thereto was terminated by a decision of the Appellate Court of Illinois upholding its validity. *Thuma v. Granada Hotel Corp.*, 269 Ill. App. 484. In the meantime, Pick had assigned his mortgage to the International and Industrial Securities Company. The mortgage was foreclosed and a deficiency decree entered in the sum of \$22,500. The facts were presented to the Chancellor of the Superior Court, all the parties in interest being present, and the court concluded that rather than permit a removal of the furniture and fixtures and thus interfere with the tenants and the income from the property, that the deficiency decree should be satisfied. The court therefore directed that \$11,000 should be paid from funds in the hands of the receiver and, in addition, \$2000 as attorney fees to the indenture trustee on account of services in connection with the chattel mortgage litigation. In addition, the receiver was directed and did issue its certificates in the amount

of \$11,500, which were purchased by the Indemnity Insurance Company of North America. These were reduced through payments by the receiver, Chicago Title and Trust Company, to \$7,011.01, and when Central Republic Trust Company took possession of the property on March 22, 1934, it was ordered by the State Court to assume and pay that balance. It must be kept in mind, so far as City National is concerned, that the decree of the State Court authorizing such expenditure and the issuance of the receiver's certificates, was entered August 11, 1933, more than a year prior to its appointment as trustee. When it took possession January 3, 1935, it took the property subject to the lien of these certificates. September 22, 1936, it paid upon the same, \$2500, and on February 23, 1937, \$511.01, leaving a balance of \$4000 due on such certificates. The plan of reorganization provided for the payment of this \$4000 to the Indemnity Insurance Company. While it is charged to the City National in this Item IV, it also represents the same item as is involved in Appeal 7186, referred to hereinafter. In order to sustain the charges in Item IV, it is necessary, of course, to hold that the proceeding in the State Court authorizing such expenditures and the issuance of receiver's certificates, was void. We have, however, *In re Granada Apartments*, 104 F. (2d) 528, upheld the validity of the State Court proceedings. There, as here, it was charged that the receiver's certificates were issued in fraud of creditors.

Item V. This item in the amount of \$11,365.42, represents 4% of debtor's gross income charged for management. Of this amount \$2512.23 was received by the Central Republic Trust Company during its tenure as trustee, and approved by the State Court. Of the amount charged by City National, the sum of \$6189.60 was also approved by the State Court. The trust deed authorized the retention of reasonable management fees of the trustee and its agents. The State Court found the amounts retained to be reasonable and approved the same by decree. The court trustee, in the instant matter, was allowed \$7500 as compensation for his services in operating the same property for a period of about six months, which is about the same rate as that received by City National. It appears from the record that the charge was the usual and customary one under the circumstances.

There is no basis for now charging this item to City National.

Item VI in the amount of \$10,186.65 represents the total of a number of small items and here again no distinction is made between City National and former trustees, and the State Court proceedings are treated as invalid. Of this item, \$2552.80 was paid by the City National to the State Court Master-in-Chancery, and \$2000 to counsel for the Chicago Title and Trust Company as receiver for fees determined and ordered paid by an order of the State Court of March 16, 1934. This latter item of \$2000 appears also to have been charged to City National in Item IV discussed heretofore. In 1935, an involuntary 77B petition was filed against the debtor by three creditors. Counsel for City National attacked the validity of that proceeding, and its contention was upheld by the Supreme Court. *Tuttle v. Harris*, 297 U. S. 225. Included in Item VI is the sum of \$4025.29 of which \$3500 was paid as attorney fees and the remainder as court costs incurred in that litigation which the court trustee here argues was without benefit to the estate. This, we need not determine—it is sufficient, so far as we are able to ascertain, that it was carried on in good faith and the charge therefore was reasonable. Also included in Item VI is the sum of \$1608.56 which appears to represent the same charge included in item III discussed heretofore. In other words, this amount is twice charged against City National.

Item VII. The sum of \$250 represents commissions paid to Arlington Hotel because of business supplied to the valet shop in the basement of the debtor's property. It was customary for a hotel to receive a commission on business furnished an outside valet shop. It is argued by City National that it was of benefit to debtor's property to maintain a valet shop on the premises in order that its tenants might be accommodated; that it did not have sufficient business of its own to maintain such a shop and, therefore, as an inducement to Arlington, it paid the customary commission for the business furnished. We perceive neither fraud nor mismanagement in such an arrangement.

Item VIII. It seems that adjacent to Granada Apartments and about the same time, there were constructed two other apartment buildings, Lincoln Park Manor and

Arlington Hotel. Granada provided the facilities for furnishing heat, hot water and refrigeration to the other buildings.

Prior to December, 1933, Granada received as compensation for such services \$11,280 per annum. At that time a contract was entered into between the owners of the two properties by which Granada was to receive as compensation \$7200, or a reduction of \$4080 per annum. Central Republic Trust Company, as trustee, continued the same charge, as did City National after it took possession. The amount of this item, \$19,170, represents the difference between what City National and its predecessor received, and what they would have received had there been no reduction in such charge. The Arlington was in process of reorganization, and it seems to be the position of the court trustee that because a committee representing the bondholders of Arlington was connected with City National in the same manner as the committee in the Granada matter, that there was some character of fiduciary relationship existing by which City National should have obtained the compensation originally established for this service. Though this situation may arouse some suspicion, we do not see how it can amount to fraud. Especially is this true in view of the rather conclusive testimony of at least two engineers that the compensation received from Arlington was fair and reasonable. In fact, it was shown that Arlington proposed to equip its own building with facilities to provide such service in the event that Granada should insist on a charge greater than what was made.

Item IX. Granada, at the time of its construction, provided on the ground floor, space for a solarium, writing room, ball room and offices for the use, not only of its own tenants, but for those of adjacent buildings in which the original owner of Granada was interested. This situation had existed since the construction of the building in 1924. It is the contention of the court trustee that City National should have converted this space so that it could have been used for commercial purposes and, that by its failure to do so, it is to be charged with mismanagement. The amount of the item, \$10,968, is supposed to represent what the rental value of this space would have been had it been made fit for leasing purposes. A number of witnesses testified pro and con concerning the

feasibility of making the necessary alterations and also the probability of a demand for such space if it had been available. We are convinced, from a study of the testimony, that the advisability of making the changes required, was a matter of speculation. Even if City National had deemed it expedient to make the necessary alterations, there still was a question of its power to incur the rather large expense which would have been necessary. If it had done so and had not been able to find tenants for the space, we doubt not but that the court trustee would now be attempting to charge it with a reckless expenditure in this respect. We do not understand that a trustee is liable for errors of judgment, provided it acts in good faith. Its acts must be judged in the light of its foresight rather than its hindsight. *Chicago Title and Trust Company v. Chief Wash Company*, 368 Ill. 146, 159.

Item X. City National states there is no evidence in support of this charge of \$5000, and we are unable to find any. In the brief for City National, the court trustee is called upon to point out upon what the item is predicated, but no response is made. It was not mentioned in the counter-claim of the trustee.

Thus, we conclude there is no justification for charging City National with these various items, with the exception of what we have said with reference to Item III. In reaching this conclusion, we are not unmindful of the rule which requires us to accept findings of the trial court supported by substantial evidence. Here, however, they are predicated upon a theory of the existence of a conspiracy to which appellants were parties. We are satisfied no such conspiracy was proven. More than that, we are convinced that so far as this record discloses, the attorneys have received no more than reasonable compensation for services rendered in numerous matters of litigation had in the state courts. Also, we are not unmindful of the broad powers of a bankruptcy court in adjudicating the equitable rights of the parties involved. Numerous cases are called to our attention in support thereof, including the recent case of *Pepper v. Litton*, 308 U. S. 295. We are not aware, however, that any court has gone so far as to hold that even a court of bankruptcy is vested with power to disturb the rights of parties long since determined by courts of competent jurisdiction merely upon a suspicion of fraud. So far as this record discloses, the

decrees, orders and judgments of the state court were in proceedings where the court had jurisdiction of the subject matter and the parties and we do not think they can be swept aside upon any such pretext as is here advanced.

Having concluded that the counter-claim of the court trustee can not be sustained, and that the findings of the court in support thereof were erroneous, we are now confronted with the perplexing problem as to what disposition should be made of the claims of City National, the committee and the attorneys. It is argued by appellants that this court has the right and should determine the fees to be allowed to these various parties on the theory that the District Court made allowances wholly inadequate. Our attention is called to *In re Dickinson Co.*, 104 F. (2d) 771, wherein this court increased a fee allowed by the District Court. We doubt, however, if that case is authority for such action here for the reason that we are uncertain as to whether the action of the court below constituted a fixing or determination of the amounts to be allowed on the respective claims.

Finding 55 (footnote 1) discussed heretofore, definitely fixes in favor of the court trustee a liability on City National in the sum of \$79,930.93, which, with interest, exceeds \$100,000, although later in the findings, as well as in the decree, it was relieved of all liability except as an offset to what might be due it. In Finding 56, it is stated that City National was not a lawful trustee, but if entitled to anything, should not receive in excess of \$500, and nothing for out-of-pocket expenses. It was found that if the committee were entitled to receive anything the maximum would not exceed \$1000 for their fees, \$1150 as a maximum allowance for depositary fees and a maximum of \$2285.21 for out-of-pocket expenses; that the attorneys for City National and the committee "if they were entitled to receive any compensation for services in this proceeding or for any previous services about Granada matters, the maximum therefor would not exceed \$4500 in addition to cash payments made to them." Then it is stated: "Any award that should be made by reason of their services, could be credited only to account of City National."

In Finding 57, the court finds that all equities are with the court trustee and then continues: "• * * but the court believes that justice to all concerned will be rendered more speedily if the opposing claims and contentions are

set off against each other and said named parties to this accounting (court trustee, City National, committee, and attorneys) are left as they are now, each to pay its own costs and charges, and no cash recovery to be allowed or made by these findings and decree." It is apparent that no definite determination was made as to the amounts which appellants were entitled to recover. It is true the maximum amounts mentioned by the court were about \$9000, but it is difficult to understand how the court arrived at the conclusion that this amount should or could constitute a set-off against more than \$100,000, specifically found due and owing by City National.

The decree entered May 2, 1939, expressly disallows Claim No. 9 by City National against the debtor,² and also all claims for expenses and allowances by if, the committee and their attorneys. City National was discharged from making any further accounting and it was provided that all amounts due it from the debtor's estate be off-set against the counter-claim of the court trustee.

While we, perhaps, have the authority on review to increase, as well as decrease fees fixed by the court below, we do not think the situation here is such that we should determine the amounts in which the various claims shall be allowed. It seems appropriate, however, to give some general expression of opinion. We have examined the claims submitted by City National and the committee for what is designated as out-of-pocket expenses, and we see no reason why those claims should not be allowed in full. As to all other claims for compensation and fees, for services rendered in connection with the reorganization proceeding, the amounts mentioned by the court are inadequate, and the court should determine and fix what is the reasonable and customary charge for services thus rendered.

At the commencement of the hearing, counsel for City National stated:

" * * * we are willing that the Court here fix the reasonableness of the charge for services rendered by us in the state court proceedings on behalf of the Indenture Trustee, notwithstanding the existing limitations upon the Federal Court's right to review the al-

2. This is the claim predicated upon the order of the Superior Court of Cook County, entered December 18, 1936 in the foreclosure proceedings discussed heretofore.

lowance for such services made by the state court in the decree of sale."

In view of this concession, the court has the right to review the reasonableness of the allowances made in the state court upon which Claim No. 9 is predicated. In doing so, the State Court proceeding should be considered as valid and untainted by fraud.

These appeals are reversed with directions that the court proceed in accordance with the views expressed, costs to be taxed to the court trustee.

Appeal 7061 is by the court trustee and presents a situation, the reverse of that which we have considered in Appeals 6986 and 7060. Here, it is contended that the court in its findings, specifically held City National liable to the court trustee in the amount of about \$80,000 and then, by its decree, refused to enter judgment against City National in conformity therewith. There would be merit to the position of the court trustee if such findings were supported by substantial evidence. We have determined to the contrary, however, and it necessarily follows that there is no merit in the position of the court trustee in the instant appeal. Therefore, that portion of the decree by which the court refused or failed to give judgment against the City National based upon the findings in question, is affirmed. Costs to be taxed to the court trustee.

Appeal 7186 is from an order of the District Court entered November 20, 1939, directing Granada Apartments Hotel Corporation, the new corporation created as a result of the reorganization proceeding, to pay the claim of the Indemnity Insurance Company of North America in the sum of \$4000 and interest forthwith. This claim has been discussed in connection with Item IV in Appeals 6986 and 7060. It is predicated upon receiver's certificates issued by order of the Superior Court of Cook County and purchased by appellee. We are unable to perceive how there could be any doubt but that the court properly directed the payment of this claim in cash by the new corporation. The plan of reorganization approved by the court, provided:

"5. Payment of the said Receiver's Certificate now outstanding issued in said foreclosure proceedings shall be assumed and paid in cash by the Reorganized Company."

The assets of the old corporation were conveyed by the court trustee to the reorganized company upon an assumption by the latter of all claims and liabilities as provided in the plan of reorganization. It seems this alone would be sufficient to settle this controversy, but in addition, this claim was before this court *In re Granada Apartments, Inc.*, 104 F. (2d) 528, and a reading of that opinion discloses clearly that this claim was to be paid in cash by the reorganized corporation. The order of the District Court is therefore affirmed. Costs taxed to the court trustee.

Appeal 7086 is from an order of June 30, 1939, dismissing the petition of the court trustee wherein it was sought to recover against Arlington, Inc. (successor of Arlington Hotel). This claim, or the major portion of it, is predicated upon the same situation discussed under Item VIII in Appeals 6986 and 7060. In those appeals, it was sought to hold City National liable for the difference in the amount it received as compensation for heating and refrigeration facilities furnished by Granada to Arlington, and the amount which the court trustee contended should have been charged. The argument here on behalf of the court trustee is predicated upon the same findings of fact (so far as material) as those upon which it was sought to hold City National liable. We have concluded those findings were without substantial support and for that reason City National should not be required to account in the matter. We also conclude there is no liability on the part of Arlington, Inc. The decree of the District Court is affirmed. Costs to be taxed to the court trustee.

Endorsed: Filed March 26, 1940. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-sixth day of March, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, March 26, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust
Company of Chicago, etc., *et al.*,
Appellants,

6986 *vs.*
Weightstill Woods, etc., *et al.*,
Appellees.

Appeal from the District
Court of the United
States for the Northern
District of Illinois, Eastern
Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs against Weightstill Woods, Court Trustee, and that this cause be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the views expressed in the opinion of this Court.

On the same day, to-wit: On the twenty-sixth day of March, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, March 26, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust
Company of Chicago, etc., et al.,
Appellants.

7060 *vs.*
Weightstill Woods, etc., *et al.*,
Appellees.

**Appeal from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.**

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed with costs against Weightstill Woods, Court Trustee, and that this cause be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the views expressed in the opinion of this Court.

And afterwards, to-wit: On the tenth day of April, 1940, there was filed in the office of the Clerk of this Court, a petition for rehearing in causes Nos. 6986 and 7060 (also cause No. 7061), which said petition for rehearing is in the words and figures following, to-wit:

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939, APRIL SESSION, 1940.

In the Matter of

GRANADA APARTMENTS, INC.,
a corporation,

Debtor.

Appeals 6986 and 7080, 7081.

} Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

PETITION FOR REHEARING.

W^EIGHTSTILL Woods,
Court Trustee.

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IN THE

**United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT.**

OCTOBER TERM, 1939, APRIL SESSION, 1940.

In the Matter of

GRANADA APARTMENTS, INC.,
a corporation,

Debtor.

Appeals 6958 and 7060, 7061.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

PETITION FOR REHEARING.

1. This is a reorganization case. By the Bankruptcy Law definite duties are placed upon the court. By Act of Congress the court is to see that scattered owners are given adequate protection.
2. In every estate administration the court itself has larger duties than it has in private litigation. Especially under the paramount law of the bankruptcy act, the court has a direct duty to the unorganized beneficiaries of the debtor estate.
3. In *Case v. Los Angeles Lumber Company*, 308 U. S. 106, our Supreme Court placed the duty squarely upon

our reorganization courts to go behind stipulations, agreements and orders in prior attempted reorganizations which have failed, and announced that the duty is to deal with the equity reality even though the intervening acts which failed of their purpose were not fraudulent.

4. Under that statement of equitable principle and duty, the Court Trustee submits that Your Honors have assumed a duty to examine the original transcript of record fully for yourselves, when you permit it to be brought here, and you incorporate it into the record issues in this court by your own orders and dispense with printing. It seems to the Court Trustee that you should make an examination and demonstrate by your opinion that there was an absence of conflicting evidence, before you can justify any change in the findings of special fact made by the trial court who heard and saw all the witnesses. We submit that the opinion is not a performance of the duty which the reorganization court is required to execute as announced by the Los Angeles Lumber case.

5. The brief for Court Trustee stated his position thus at page 51:

"The failure of City National to secure from its predecessors and other despoilers of Granada estate, an accounting and adequate settlement of moneys due, was followed by continued use of Granada funds for private litigation and non-trust purposes. The District Court has so found. Many of the facts are admitted by the statement of Mr. O'Brien and by the pleadings. Whatever conflict may be claimed in the evidence, is not sufficient to raise any power or duty of this Court to revise or review this finding of fact. The rules of court which limit the size of this brief, render impractical an assembly of all the evidence which is in the record, separated for each finding of fact. Every finding is supported by substantial evidence in the record."

The oral argument, which your opinion does not mention, was used by the Court Trustee to enlarge upon the factual situation.

6. The Court Trustee's brief (7060 and 6986 pages 75 to 80) demonstrates that many of the transactions in this Granada matter are identical in character with the transactions involved in the *Peacock Food Markets Case*, 108 Fed. (2d) 453, which was decided in favor of a Court Trustee, recently by Your Honors. The brief also demonstrates that that case is authority for disposing of the present case in a like manner in favor of the Granada Court Trustee. The brief for Court Trustee has utilized many pages of parallel columns in making a careful comparison of the two cases. The opinion of this case fails to distinguish the two cases. It does not mention the *Peacock Food Market Case*, nor mention the discussion of same by the brief of Court Trustee.

7. In the *Peacock Food Market Case* this Court of Appeal held that the suspicious circumstances attending the personal relationship of the parties, voided the transactions involved, unless evidence should be given which would tend to prove that the motives of the parties were *honest and honorable*. In the case at bar Your Honors call upon the Court Trustee strictly to prove that each and every act of the parties (though very suspicious) was in fact the result of *dishonest and dishonorable* motives. Your Honors by the present opinion have saddled an entirely different burden of proof upon this Court Trustee, than was allotted to the Court Trustee in the *Peacock Food Markets Case*. This Court Trustee had every reason to rely upon that case in preparing his briefs at bar. Accordingly this Court Trustee respectfully inquires why such a different application of the burden of proof is announced in the case at bar. The question involved is so important that Your Honors might state the reason in the opinion.

That City National, its committee and counsel, were primarily engaged in liquidating the Cody Trust Com-

pany, and that the reorganization of Granada was merely incidental, is evidenced by the following cases decided in the Appellate Courts of Illinois from 1932 until 1938, in which said counsel were of record on behalf of Cody Trust Company:

(1) *In re Petition of Cody Trust Company*, 266 Ill. App. 141 (1932). Counsel for Appellant—Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien and John M. Baker). Opinion filed April 5, 1932.

(2) *In re Appeal of Cody Trust Company*, 269 Ill. App. 638 (1933). Counsel for Appellant—Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien and Thomas R. Mulroy). No appearance for appellees. Affirmed March 6, 1933.

(3) *Cody Trust Company v. Dittmar*, 272 Ill. App. 167 (1933). Counsel for Appellant—Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien and Alfred E. Williston). Opinion filed October 25, 1933.

(4) *Cody Trust Company v. Hotel Clayton Co.*, 293 Ill. App. 1 (1937). Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien). Opinion filed September 9, 1937.

(5) *People v. Cody Trust Company*, 294 Ill. App. 342 (1938). Defrees, Buckingham, Jones & Hoffman (Vincent O'Brien and John Merrill Baker). Opinion filed March 16, 1938.

8. The Court Trustee submits that the elementary law of trusts requires City National and Associates, as accounting trustees to prove not only the rightness, and propriety of every item of their accounts, but also to prove the good faith of their conduct in incurring said items and in paying out moneys. (Brief pages 43-50.) Also the rule is that all the presumptions require this court to sustain the decree and the findings by the trial court, until and unless the contrary is shown convincingly by the record in the Court of Review. Also section 70d5 of the bankruptcy act confirms the duty of a claimant against the estate as follows:

"A person asserting the validity of a transfer under this subdivision shall have the burden of proof."

9. City National and Committee and their counsel by their answer filed here November 16, 1939, to persuade Your Honors to grant them the opening and closing argument, asserted that they have the affirmative in this litigation.

10. It seems to the Court Trustee that the opinion filed March 26, 1940, reverses all these basic principles, and starts from a new and false major premise. The opinion seems to assert that the burden of affirmative case is upon the Court Trustee. You assume that he is plaintiff. Also you apply the rule which is proper only between private litigants who have dealt at arms length.

11. The Opinion overlooks the undisputed fact that City National Exhibit "U" at Page 626, Volume II, of printed record, purports to be only a release and acquittance of balance of payments for services for the one year 1933. That document is dated January 5, 1934. There is nothing in that document, nor elsewhere in the record any reason shown, for any reduction of charge for services to Arlington for the year 1934 or subsequent years. The one and only purpose of that document was to charge off a bookkeeping entry made in 1933.

12. The Opinion also overlooks the undisputed fact that the decree by the Superior Court of Cook County, dated December 18, 1936, expressly refuses to accept or confirm any accounting by City National with anyone. The Judge who signed that decree expressly wrote into the decree with pen and ink in his own handwriting the following language, which appears in Volume One, Page 128 of the printed record, and at 1279, Volume III of the original transcript of record:

"The Court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein."

Pages 511 to 515 of Volume 2 of the printed transcript

only partly abstracts that decree. We submit that the opinion by this court reads said decree to mean directly contrary to the ~~desperate~~ purpose of the Judge who signed that decree of the Superior Court.

The opinion errs in stating that the sum of \$1,608.56 was applied on the claim of City National. The decree in the Superior Court merely found that City National claimed it held that sum as trustee. The court struck out the supposed accounting, and wrote in with pen that City National as trustee "represents" it held only that much money. (See original transcript at page 1260.) The record in the bankruptcy court is that City National made no such claim until the trial, and the evidence from the City National records which it produced show this sum has never been applied, but is still held. (See page 851, Volume III of original transcript.) This is part of the money which should have been turned over to the court trustee, upon his written demand at the time of his appointment in May, 1937.

13. The Opinion by Your Honors does not mention the written list of securities, which City National received January 5, 1935 and undertook to be responsible for as successor trustee. City National nowhere in its accounting with the court, and counsel for City National nowhere in its briefs to this court, has attempted to justify or to show any liquidation of the Cody Trust unperformed item on that list. Although the Court Trustee as authorized by court order, upon his appointment made specific demand upon City National, its counsel and its officers to turn over any and all papers and securities pertaining to Granada estate; yet neither City National nor its officers nor its counsel ever mentioned the existence of said list of securities until the very end of the trial in late October 1937, when it was put into record in a mass of other correspondence, which appears at Volume 3 of original trans-

cript, Pages 1321-22. This list of securities shows plainly that the Central Trust Company, the Central Republic Trust Company and City National, all treated themselves and considered themselves not merely an indenture trustee, but as general trustee for Granada for personal property and all other purposes. There is not in the record anywhere any showing that City National ever took any act at all to require anyone to perform the duty shown by said list of securities and by Court Trustee's Exhibit "R", which is at Page 338 of Volume 2 of the printed transcript of record.

14. On the contrary, City National by accepting said list of securities including said Exhibit "R", definitely absolved Central Republic Trust Company and, definitely undertook that Cody Trust Company would and should perform the obligation therein expressed to remove all liens prior to the new financing undertaken in 1928. In presenting the Granada plan to the court and to the bondholders, these facts and situations were concealed. No one contends anywhere in this record that Cody Trust or City National has performed any such duty. On the contrary, City National has consistently paid over Granada money for the liens which the Cody Trust Company is bound to remove by terms of the prospectus and by said Exhibit "R". By reason of the deceitful plan, and the direction given by this court, the new corporation has been compelled to purchase those liens at this time.

15. City National still retains the original of said list of securities, and the original of said Exhibit "R" in its personal possession. As trustee it took no action whatever to liquidate the same for benefit of Granada estate. It failed to inform the bondholders. Its counsel failed to inform the bondholders. The existence and nature of the document was concealed until three months after the Granada plan was confirmed by the bankruptcy court on July

14, 1937. This is not only a civil liability, *People v. Central Republic Trust Co.*, 300 Ill. App. 297, at 308; but is a failure of duty to make disclosure required by section 29 of the Bankruptcy Law as your Honors have ruled; *U. S. v. Shapiro*, 101 Fed. (2d) 375.

16. The Opinion states that the court received meager aid from the Court Trustee to determine whether the findings of the trial court were supported by the evidence. The opinion suggests that the Court Trustee did not cite appropriate record references in his brief which would support the findings of the court below. The Court Trustee went as far as permitted by rules of this court as to size of brief to be filed. The Court Trustee at the time the brief was prepared and now believes that further reference should only be supplementary to other presentation, because opposing counsel at no place in their briefs contended that for any absence of conflicting or substantial evidence in the court below. Opposing counsel by their assignments attacked only a part of the findings, and supported these attacks only by the statement in their briefs that the Judge was partisan. The opinion by this court mentions nothing stronger than some conflicting testimony.

17. Opposing counsel admitted that there was "substantial" evidence to support the findings of the trial court when they said (Page 28 of original brief 6986 and 7060):

"for in those instances in which there was conflicting evidence, the findings, if against the weight of the evidence, should not stand if it also appears that the court was prejudiced and prejudged the case."

18. Since Your Honors did not accept the contention of opposing counsel that the court below was prejudiced, and since opposing counsel placed their case on that false ground; it would seem that the opinion of this court

was in error in reversing any findings of fact made by the trial court. In their briefs in 6986 and 7060, opposing counsel never contended that there was no evidence to support the findings of the court below. This new theory of the case was advanced for the first time by opposing counsel in oral argument before Your Honors on February 23, and was stated in the *rebuttal* portion of that argument. The Court Trustee had no occasion nor an opportunity to meet such a contention.

19. Under these circumstances it would seem that the statement concerning the lack of factual references by the Court Trustee was inaccurate. This is particularly true when it is noted that the brief of the Court Trustee did contain APPROPRIATE RECORD REFERENCES to support the findings made by the trial court. At pages 77 and 78 of the Court Trustee's brief, there are numerous record references under the heading "EVIDENCE CONSIDERED BY THE COURT". We submit that the opinion is inaccurate in its statement that reasonable record references were not made.

The theory adopted by the opinion seems to be that all an appellant needs to do is to say that he should not be required to prove a negative. If that be so then the appellee in every case must retry in the Court of Review the whole record. Such a theory completely destroys all the usual standards of presenting a case for appellate review.

The opinion overlooks the fact testified to by all of the City National witnesses, that its reorganization division and personnel did all the management work at Granada for Central Republic Trust Company as Trustee, and later for the receiver of that trust company, from the time Central Republic Trust Company began to manage the property. The witnesses for City National admitted that in fact City National had managed the property from the time that Central Trust Company was merged

into the Central Republic Trust Company. The transfer from receiver of Central Republic Trust Company to City National was a merely formal act, to recognize the situation that had existed in fact, since the Cody Trust Company went into receivership in December, 1933. In truth the City National was the successor to the management by the Cody Trust Company. At the trial the testimony of both the Cody Trust employees and City National employees, confirms the truth of this paragraph.

20. The orders of this court relating to consolidation of evidence and of oral argument led to confusion of the issues that had been purposely separated by each appeal. The Court Trustee suggests that these orders relating to consolidation put into effect a departure from the accepted and usual course of judicial action. The orders are prejudicial after the fact, to the Granada beneficiaries in all these appeals. In effect they accomplish denial of the statutory right to take separate appeals and to raise distinct issues.

21. These orders were the result of the repeated petitioning by opposing counsel who said, after the filing of some briefs, that the issues as drawn were disadvantageous to their successful defense. Their petition for consolidation, viewed rightly, were requests for this court to create new and more favorable issues after some briefs by the Court Trustee had been filed, and after the relation of the record to Appellees position was made apparent by said briefs.

22. The Court Trustee submits that Your Honors were in error in granting the prayers of such after the fact petitions. By that action this court aided the Appellees to change the rules, by which the appeals were to be conducted. Such procedure leads to confusion. Parties who prepare appeals will not know what the record is going to

be. To prevent confusion rules were promulgated by this court and by the United States Supreme Court in 1938, which provided that the record must be specified by the parties in the trial court within a certain time after the notice of appeal. The order of this court dated October 27, 1939, directed the reverse of this rule, by allowing those who had declined to specify the transcript of the evidence as a part of the record in some appeals, to incorporate the transcript from another appeal into the record of several appeals. This was done after some briefs are filed. Such procedural action would keep an appeal case in a fluid state, with changing issues and a possible changing of the affirmative burden.

23. The order of this court that all appeals be heard upon oral argument at one time caused further confusion which was detrimental to a clear view of the actual issues involved in each appeal separately. It prevented an accurate argument for more than one appeal. That your Opinion does not mention the matters chiefly discussed on the oral argument, shows how ineffectual it became under the circumstances.

24. The briefs filed in all appeals by counsel for City National show a determined effort to suggest confusion to the mind of this court as to the issues in each appeal. After the entry of the orders to change the records, there remained but a single safeguard for the orderly consideration of the separate issues in each appeal. That safeguard was the order of this court, "*that separate briefs be filed in the three causes*". With a zealous application counsel for City National and Arlington Inc. hammered away to batter down this last line defense of orderly procedure. Each brief of theirs adopted by reference material from another brief in another appeal between other and different parties. Each brief of opposing counsel referred to other points argued in other briefs. In order to decide

any appeal Your Honors were asked by them to read the briefs in at least three appeals. Opposing counsel accomplished the consolidation which your order had forbidden. To all intents and purposes this court might as well have ordered a wholesale consolidation of all appeals because:

- (1) There was consolidation of evidence from the record of some appeals to others.
- (2) There was a consolidation (by reference) in the briefs of counsel for City National and Arlington, despite the contrary order entered by this court.
- (3) There was a consolidation of appeals by means of a single oral argument.
- (4) There was a consolidation of the appeals in the opinion, since only one opinion was written.

The studied effort of the counsel for opposing litigants has accomplished confusion. We submit that in the effort they have been eminently successful.

25. This strategy designed to confuse was not the act of novices. It was the practiced strategy used as flanking defense which was so successful in the court below that at the last moment that court failed to enter a judgment in conformance with the clear finding of facts previously made, which findings were supported by adequate evidence. The same method prevented the Superior Court Judge from seeing the picture as a whole in the foreclosure proceedings, although that Judge gave strong evidence of his personal suspicions as to the impropriety of acts done by City National. By his own handwriting at the conclusion of the decree he said:

"The Court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein." (See Vol. 1, page 128 of printed record, or page 1279 Vol. III, of original record.)

26. In every court where these professional reorganizers for ten years have litigated the Granada affairs, they have used these tactics in a successful effort to prevent the court from realizing the nature of offenses committed against the uninformed creditors and bondholders of Granada. Each time evidence of the situation reached the court. But each court found the true situation so unpleasant to determine, that its judgment only hinted at the true facts. The opinion of this court at page 10, like the Superior Court admits these facts when it states that, "this situation may arouse some suspicion."

27. The question which suggests itself is: Why if the situation is innocent does opposing counsel find it necessary to resort to confusing consolidation? Why becloud the real issues involved? Why this repeated device for confusion? Why the continued petitions to this court of Appeal to consolidate all appeals?

28. The answer is apparent. In the District Court the strategy was too long delayed. That court made the findings of fact here attacked by City National. That mistake was not repeated here. As soon as two appeals could be taken, consolidation was asked for. The first petition to consolidate was filed before this Court of Appeal had heard any one of the Granada appeals then pending. Petitions about consolidation were repeated, even after briefs had been filed in some of these causes. The barrage was kept up by cross references in the briefs, and by a single consolidated oral argument.

29. The opinion filed March 24, 1940 by Your Honors, indicates that the court did not review the entire record or the brief of the Court Trustee. The Court Trustee wishes to remind Your Honors that there are over 400 former bondholders of the debtor corporation which reside all over the country. The primary duty of fair deal-

Petition for Rehearing

ing with them falls upon Your Honors. This Court Trustee recognizes that he has a duty to perform both for the bondholders and this court. He respectfully submits however, in view of the orders entered by this court, the rules of this court limiting the extent of briefs, the solemn duty of this court in a reorganization case, and the involved nature of the record (created by opposing counsel), that Your Honors may not have read the record in these appeals as accurately as it should have been read.

30. Since the briefs in the present appeals were prepared the Illinois Appellate Court has handed down an excellent opinion that reviews the Illinois Supreme Court decisions on the matter of the burden of proof as related to the breach of fiduciary relationships. The material portions of that opinion are set forth below. The case so decided is *Goranson v. Solomonson*, 25 N. E. (2d) 930 at 931 and 932.

"The law is well settled that where a fiduciary relation exists between parties, especially as between attorney and client, the utmost good faith must be exercised in all dealings by the attorney to his client. One of the earlier cases is *Ross v. Payson*, reported in 160 Ill. 349, and on page 358, 43 N. E. 399, 401, we find the following: 'Thus, it is said, in Story's Equity Jurisprudence (section 310): The situation of an attorney or solicitor puts it in his power to avail himself, not only of the necessities of his client, but of his good nature, liberality, and credulity, to obtain undue advantages, bargains, and gratuities. Hence the law, with a wise providence, not only watches over all the transactions of parties in this predicament, but it often interposes to declare transactions void which, between other persons, would be held unabjectionable.' In *Jennings v. McConnel*, 17 Ill. 148, Chief Justice Scates, rendering the opinion of the court, quoted with approval the foregoing language, and said (17 Ill. page 150): 'And this is applicable to contracts or gifts generally, while the confidential relation continues, and is not confined to

particular property about which the attorney may have been employed. It is not required that a client should establish fraud or imposition—the onus of proof—upon showing the relation when the contract or gift was made, is upon the attorney to show fairness, adequacy and equity; and upon failure to make proof, courts of equity treat the case as one of constructive fraud.¹ The doctrine here announced has never been departed from by this court, but often reiterated. *Alwood v. Mansfield*, 59 Ill. 496; *Laclede Bank v. Keeler*, 109 Ill. 385; *Morrison v. Smith*, 130 Ill. 304, 23 N. E. 241; *Elymore v. Johnson*, 143 Ill. 513, 32 N. E. 413; 21 L. R. A. 366, 36 Am. St. Rep. 401.

"This case has been cited with approval in *Ringen v. Ranes*, 263 Ill. 11, 104 N. E. 1023; and *Warner v. Flack*, 278 Ill. 303, at page 307, 116 N. E. 197, 198, 2 A. L. R. 423, in which it is said: 'The procuring of the conveyances to the defendants from their client was an independent transaction, entered into after the trust deed had been obtained. The demurrer admits that during the existence of the relation of attorney and client the defendants purchased their clients property. In such case it is not necessary to show fraud or imposition on the client, but the burden is thrown upon the attorney of proving the perfect fairness, adequacy, and equity of the transaction, and upon his failure to make such proof a court of equity will treat the case as one of constructive fraud.'

"In the more recent case of *Masterson v. Wall*, 365 Ill. 102, at page 110, 6 N. E. 2d 161, 165, we find the following: 'Where a fiduciary relation exists, the burden of proof is on the grantee or beneficiary of an instrument executed during the existence of such relationship to show the fairness of the transaction, that it was equitable and just and that it did not proceed from undue influence. *Suchy v. Hajicek* (364 Ill. 502), 4 N. E. (2d) 836; *Allen v. McGill*, *supra* (311 Ill. 170, 142 N. E. 470); *Rutherford v. Schneider*, 307 Ill. 28, 138 N. E. 181; *Pillsbury v. Bruns*, *supra* (301 Ill. 578, 134 N. E. 103); *Dowie v. Driscoll*, 203 Ill. 480, 68 N. E. 56. This rule applies to contracts between client and attorney made during the existence of such relation and afterwards attacked by the client. *Warner*

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v. *Flack*, 278 Ill. 303, 116 N. E. 197, 2 A. L. R. 423; *Willin v. Burdette*, 172 Ill. 117, 49 N. E. 1000; *Ross v. Payson*, 160 Ill. 349, 43 N. E. 399; *Morrison v. Smith*, 130 Ill. 304, 23 N. E. 241; *Jennings v. McConnel*, 17 Ill. 148.

"The law is clearly stated in these cases, that if the relation of attorney and client exists (any fiduciary relation), then if a contract is entered into between the parties, that the burden of proof is upon the defendant to show that the same was entered into fairly, and that the client had been advised fully in regard to his rights in the matter."

This rule is applicable. The rule provided by Section 70d5 of the Bankruptcy Act is applicable. The rule in *Peacock Food Products Case* also is applicable. The fact of existence of fiduciary relationship of City National, Committee and Counsel, is unquestioned by anyone in this record. A rehearing is requested.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Endorsed: Filed April 10, 1940. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the eighteenth day of April, 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 6986 and 7060 (also cause No. 7061), a motion for leave to file a printed summary of substantial evidence, etc., which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor. } Appeals from the District
Appeals 6986 and 7060, 7061. } Court of the United
States for the Northern
District of Illinois, East-
ern Division.

**MOTION BY COURT TRUSTEE MADE
APRIL 18, 1940.**

The Court Trustee makes motion, that in the event a rehearing is allowed, Your Honors will order permission for the Court Trustee to file within twenty days after the order for rehearing, a printed summary of substantial evidence from the original transcript of record, arranged under and in support of the findings of fact made by the District Court.

In explanation of this motion, suggestions are herewith filed.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

Suggestions to Support Motion by Court Trustee.

The petition for rehearing is intended to illustrate by examples, the contention by the Court Trustee that the Opinion by this court filed March 26, 1940, reverses the fair meaning of basic documents, about the wording of which no dispute arose at the trial or on review; and that the Opinion disregards primary principles of equity between fiduciaries and beneficiary certificate holders. Reasonable space limitations set by rules, prevented doing more than that. The legal principles and undisputed documentary facts, urged by the Court Trustee by briefs and by petition for rehearing, it is submitted are ample and sufficient to require confirmation of the findings made by the District Court, and to dispense with any need to review the factual record as a whole.

However, the Court Trustee does not stand on ceremony. Without lessening his emphasis on legal principles that are applicable, and not withdrawing from his position, the Court Trustee is willing to go through this original transcript of record and prepare a detailed arrangement of the factual material in relation to each one of the findings of fact made by the District Court. As an officer of the court he wishes to assist by any means the court desires. He asks permission to prepare from the transcript a printed summary of substantial evidence, for use by the court under the circumstances set forth in the motion to which these suggestions are attached. The volume of the record brought here for these appeals was far too large for an analysis of detail evidence to be included within the limits permitted by the rules; for briefs or petition for rehearing. Said documents so state.

In these cases at bar, no one contends that there ever was any fair disclosure to any of the bondholders or any of the creditors. There was failure to disclose and turnover Granada documents to the Court Trustee. Even the plan filed in the District Court and by Committee and Counsel, makes no fair disclosure. By means of the proceedings in the District Court, which are now before this court, the Court Trustee has assembled what documents and other evidence he could learn were available. If City National and Associates had obeyed the order in May 1937, and had turned over all funds and documents in hand to the Court Trustee, a concise record would

have been made in the District Court and for these appeals. That was never done. Even now the Indenture Trustee, the Indenture Committee and their Counsel, are refusing to make any adequate disclosures to this court of the fairness of their conduct. In the District Court they criticized severely the Court Trustee for asking an inquiry; and in this court they insist upon placing the entire burden upon the Court Trustee. They say that they should not be asked to prove a negative. If there ever was a complete reversal of the substantive law of fiduciaries, this is it. If there ever was a sheer use of procedure to bar proper discovery for beneficiaries, this is it.

Under the Illinois cases of *White v. Sherman*, 168 Ill. 589, 605, 610, and *Kinney v. Heitman*, 373 Ill. 415, no receipts nor release, nor court proceedings between the Indenture Trustee and beneficiaries, amount to an adjudication, nor to an act binding upon the beneficiary, unless beforehand there was a complete disclosure openly made by the fiduciary, directly to the beneficiaries, of all material facts.

In the case of *In Re Clark's Will*, 242 N. Y. S. 210, (1930) the court pointed out that higher duties are imposed upon and higher abilities expected from a *trust company* than from an individual. At page 220 the court said:

"In trust relations these days, when trust companies have entered the business, much more is expected from a corporate trustee than from the old fashioned individual executor or trustee. Trust companies seek this character of business, claiming that they are specially qualified and financially responsible."

The necessity for this high degree of fidelity and ability is also expressed by the Supreme Court of Wisconsin in 1926, in the case of *Harrison v. First Wisconsin Trust Co.*, 191 Wis. 23, 209 N. W. 945, 947; and in the case of *Busby, et al. v. First National Bank of Chicago*, 288 Ill. App. 500, 520, 6 N. E. (2d) 451, 459, the Illinois Appellate Court confirmed that requirement when a Trust Company is trustee.

In 1934 in the case of *United States National Bank & Trust Company v. Sullivan*, 69 Fed. (2d) 412, 415, Your Honors pointed out that,

"Good faith alone will not protect a trustee, but he must also exercise diligence, prudence and absolute fidelity."

In the Superior Court foreclosure proceeding, there was in reality no one representing the bondholders or the general creditors. They could not be affected by that proceeding. But opposing counsel treat that proceeding as a general reorganization. We submit that such is not the purpose or the nature of the foreclosure actions in Illinois. The Judge of Superior Court purposefully wrote a special limitation at the foot of his decree.

To use that proceeding as a basis to bar the general creditors or even the bondholders from asking a full disclosure and full hearing in the Federal Court, seems to the Court Trustee a mis-use, both of the foreclosure proceedings and of the reorganization proceedings in the Federal Court. They are unlike proceedings, with very different purposes, and with very different parties before them.

In this court City National and Associates took two separate appeals and made many preliminary motions for the general purpose of pretrying the appeals on their statements and repeated restatements about the record. This unusual procedure, and orders in this court in these Granada appeals wasted much time and attention of the Court Trustee. There were three or more motions by the opposition for consolidation. The record reads that Your Honors denied all the motions for consolidation, except that you allowed City National and Associates to consolidate their own two appeals, 6986 and 7060. Your order November 27, 1939, so provided. But a merger worse than consolidation has been accomplished by indirection. The absolute right to take and have heard separate appeals has been defeated by procedural manipulation by City National and its Counsel. The briefs by the Court Trustee followed your order; but the briefs for others did not do so. The Opinion as written, is based upon a practical consolidation accomplished by the counsel for City National, regardless of the orders by this Court denying consolidation.

The purpose of this printed summary of substantial evidence to be made from the transcript of record, is not to have this court weigh the evidence, nor to try the case de novo in this court, as the argument for the opposition seems to wish this court to do. The purpose is to supply a fair excerpt from the entire transcript to show, how inadequate, partisan and garbled is the printed record filed here by City National and its Associates. The pur-

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pose also is to demonstrate that all the findings of fact made by the District Court are firmly supported by substantial evidence in the record, if this court desires the Court Trustee to prepare such a demonstration in this court.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Received copies of foregoing Motion and Suggestions, this Eighteenth day of April, A. D. 1940.

Defrees, Buckingham, Jones & Hoffman,

By: Grant Johnson.

Mort D. and Frank Goldberg,

By: Frank Goldberg.

Endorsed: Filed April 18, 1940. Frederick G. Campbell,
Clerk.

And afterwards, to-wit: On the twentieth day of April, 1940, there was filed in the office of the Clerk of this Court, an answer to petitions for rehearing, in causes Nos. 6986 and 7060, (also in causes Nos. 7061, 7086 and 7186), which said answer is in the words and figures following, to-wit:

**IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.**

October Term, 1939, January Session, 1940.

**In the Matter of
Granada Apartments, Inc., a corporation,
Debtor.**

Nos. 6986 and 7060.
City National Bank & Trust Company of
Chicago, Etc., et al.,
Appellants,
vs.
Weightstill Woods, Court Trustee, et al.,
Appellees.

No. 7061.
Weightstill Woods, Court Trustee,
Appellant,
vs.
City National Bank and Trust Company of
Chicago, et al.,
Appellees.

No. 7186.
Granada Apartments Hotel Corporation, a
corporation, and Weightstill Wood, Court
Trustee,
Appellants,
vs.
Indemnity Insurance Company of North
America, et al.,
Appellees.

No. 7086.
Weightstill Woods, Court Trustee,
Appellant,
vs.
Arlington, Inc., a corporation,
Appellee.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

ANSWER TO PETITIONS FOR REHEARING.

Vincent O'Brien,
John Merrill Baker,
Tracey Wilson Buckingham,
Counsel for Respondents.

Note: We adopt the caption employed by the Court in its
opinion.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

October Term, 1939, January Session, 1940.

In the Matter of
Granada Apartments, Inc., a corporation,
Debtor.

Nos. 6986 and 7080.
City National Bank & Trust Company of
Chicago, Etc., et al., *Appellants,*
vs.
Weightstill Woods, Court Trustee, et al.,
Appellees.

No. 7061.
Weightstill Woods, Court Trustee,
Appellant,
vs.
City National Bank and Trust Company of
Chicago, et al., *Appellees.*

No. 7186.
Granada Apartments Hotel Corporation, a
corporation, and Weightstill Wood, Court
Trustee,
Appellants,
vs.
Indemnity Insurance Company of North
America, et al., *Appellees.*

No. 7086.
Weightstill Woods, Court Trustee,
Appellant;
vs.
Arlington, Inc., a corporation,
Appellee.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

ANSWER TO PETITIONS FOR REHEARING.

May it please the Court:

The Petitions for Rehearing—coupled with the “Motion
by Court Trustee made April 18, 1940”—are amazing
documents.

The fundamental purpose of petitions for rehearing is,

of course, to assist the Court in pointing out any matters which may have been "misapprehended or overlooked."

Instead—we find a "lecture" to the Court concerning its duties—and a charge (in effect) that the Court did not seem to understand what it was doing. In addition, a ranting and vicious attack is made upon Appellant Counsel. Needless to say, we have smarted under the charges of fraud and conspiracy made against us by the Court Trustee, but have endeavored to treat them with the restraint befitting those who have practiced at the Bar of this Court for many years. Such attacks are of the irresponsible "smearing type"—and it seems to us, in simple justice, call for the rebuke that is so richly deserved.

The "re-argument" does not merit reply. *The appeals have been fully heard, understood, and no points have been overlooked or misapprehended.*"

Respectfully submitted,

Vincent O'Brien,

John Merrill Baker,

Tracy Wilson Buckingham,

Counsel for Respondents.

Endorsed: Filed April 20, 1940. Frederick G. Campbell,
Clerk.

And afterwards, to-wit: On the seventh day of May, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, May 7, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc. } Debtor.

City National Bank and Trust Company of
Chicago, etc., *et al.*, Appellants,

6986,
7060

vs.

Weightstill Woods, etc., *et al.*,

In the Matter of
Granada Apartments, Inc. } Debtor.

Weightstill Woods, etc., *et al.*, Appellants,

7061

vs.

City National Bank and Trust Company of
Chicago, etc., *et al.*, Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

It is ordered by the Court that the petition for a rehearing of these causes be, and it is hereby, denied.

And afterwards, to-wit: On the tenth day of May, 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 6986 and 7060 (also cause No. 7061) a motion to stay mandate, etc., which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of

Granada Apartments, Inc.,
a corporation,

Debtor

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

Appeals 6986 and 7060, 7061.

PROOF OF SERVICE.

We acknowledge receipt this May 10, 1940, of copies of motions and suggestions to stay mandate and to certify the record in the appeals mentioned above.

Defrees, Buckingham, Jones & Hoffman,
By: Defrees, Buckingham, Jones & Hoffman.

Mort D. and Frank Goldberg,
By: Frank Goldberg.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation, } Appeals from the District
 Debtor. Court of the United
Appeals 6986 and 7060, 7061. States for the Northern
 District of Illinois, East-
 ern Division.

MOTIONS BY COURT TRUSTEE.

Weightstill Woods as Court Trustee respectfully asks that the mandate be stayed pending disposition of these appeals on petitions for certiorari to the Supreme Court of the United States.

Also the Court Trustee asks that the Clerk of this court certify to the Supreme Court, the proceedings had in this court in these appeals; and that the Clerk also be directed to send to the Clerk of the Supreme Court, the original transcript sent here from the District Court by a special order.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor.
Appeals 6986, and 7060, 7061.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

SUGGESTIONS BY COURT TRUSTEE.

In support of his motions for stay of mandate and for certification of the record to the Supreme Court of the United States, the Court Trustee respectfully suggests that he desires to seek a review in that court by writs of certiorari, and that it is necessary to have in that court, the original transcript which has been sent here from the District Court, for the reason that this court made special orders permitting reference to the original transcript, outside of and independent of the printed transcript of record which was filed in this court.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Endorsed: Filed May 10, 1940. Frederick G. Campbell,
Clerk.

And afterwards, to-wit: On the sixteenth day of May, 1940, the following further proceedings were had and entered of record, to-wit:

Thursday, May 16, 1940.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,

Debtor.

City National Bank and Trust Company of
Chicago, etc., *et al.*,
6986, *Appellants.*
7060

vs.

Weightstill Woods, etc., *et al.*,
Appellees.

In the Matter of
Granada Apartments, Inc.,

Debtor.

Weightstill Woods, Court Trustee, *et al.*,
Appellants.

7061 *vs.*

City National Bank and Trust Company of
Chicago, etc., *et al.*,
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East
ern Division.

On motion of Weightstill Woods, Court Trustee, it is ordered that the mandates of this Court in these cause be, and they are hereby, stayed pursuant to Rule 25 of the rules of this Court.

It is further ordered that the Clerk of this Court transmit to the Supreme Court of the United States the original transcript of record sent to this Court from the District Court of the United States for the Northern District of Illinois, Eastern Division, by a special order.

And afterwards, to-wit: On the fourteenth day of June, 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 6986 and 7060 (also in causes Nos. 7061 and 7086), a consented motion for a further stay of mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,

Debtor.

Appeals 6986 and 7060, 7061 and
7086.Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

PROOF OF SERVICE.

We acknowledge receipt this June 14th 1940, of copies
of motions and suggestions to extend stay of mandate;
and we make no objection to the order therefor.

Defrees, Buckingham, Jones &
Hoffman,

By: Vincent O'Brien.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of

Granada Apartments, Inc.,
a corporation,

Debtor.

Appeals 6986 and 7060, 7061
and 7086.Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

MOTION BY COURT TRUSTEE.

Weightstill Woods, as Court Trustee, respectfully asks
that the stay of mandate be extended an additional 40
days for completion of preparation of record, and com-
pletion of petitions for certiorari to the Supreme Court
of the United States.

Respectfully submitted,
Weightstill Woods,
Court Trustee.

SUGGESTIONS BY COURT TRUSTEE.

In support of his motion for 40 days extension of the stay of mandate, pending completion of records and petitions for certiorari to the Supreme Court of the United States, the Court Trustee respectfully suggests that substantial progress has been made in preparing the records and petitions in these several matters, but that an additional 40 days is necessary to complete and file the record and the petitions before the Supreme Court at Washington.

Respectfully submitted,

Weightstill Woods,
Court Trustee.

Endorsed: Filed June 14, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the fifteenth day of June, 1940, the following further proceedings were had and entered of record, to-wit:

Saturday, June 15, 1940.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust Company of
Chicago, etc., *et al.*,
6986, Appellants,
7060 vs.
Weightstill Woods, etc., *et al.*,
Appellees.

In the Matter of
Granada Apartments, Inc.,
Debtor.

Weightstill Woods, etc., *et al.*,
7061 vs.
City National Bank and Trust Company of
Chicago, etc., *et al.*, Appellees.

In the Matter of
Granada Apartments, Inc.,
Debtor.

Weightstill Woods, Court Trustee,
7086 vs.
Arlington, Inc., Appellee.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

On motion of Weightstill Woods, Court Trustee, it is ordered that the mandates of this Court in these causes be, and they are hereby, stayed for an additional forty days.

And afterwards, to-wit: On the twenty-second day of June 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 6986 and 7060, a motion to dismiss appeals, etc., which said motion is in the words and figures following, to-wit:

IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939, APRIL SESSION, 1940.

In the Matter of

GRANADA APARTMENTS, INC.,
a corporation,

Debtor.

Appeals 6986 and 7060.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

MOTIONS, SUGGESTIONS AND NOTICE.

WEIGHTSTILL WOODS,
Counsel for Court Trustee,
77 West Washington Street.
Chicago, Illinois.

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IN THE

United States Circuit Court of Appeals FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, 1939, APRIL SESSION, 1940.

In the Matter of

GRANADA APARTMENTS, INC.,
a corporation,

Debtor.

Appeals 6986 and 7080.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

PROOF OF SERVICE.

In the appeals mentioned above, we acknowledge receipt
this June 22, 1940, of printed copies of motions and sug-
gestions by the Court Trustee.

DEFREES, BUCKINGHAM, JONES & HOFFMAN,

By:

Counsel for Appellants.

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NOTICE.

Appellants and their counsel are advised that the within motions and suggestions are filed in the office of the clerk of said court on this June 22, A. D. 1940.

WEIGHTSTILL WOODS,

Counsel for Court Trustee,

77 West Washington Street,
Chicago, Illinois.

MOTIONS TO DISMISS APPEALS FOR WANT OF
JURISDICTION: AND MOTIONS TO
RENTAX COSTS.

At the same term and same session of this court, Weightstill Woods, as Court Trustee, respectfully presents these motions:

- (a) That the Circuit Court of Appeals will withdraw its Opinion and vacate all orders against the Appellees, in appeals 6986 and 7060.
- (b) That the court will dismiss appeal 7060 for lack of jurisdiction at any time, and assess all costs against the Appellants.
- (c) That the court will quash the citation and dismiss appeal 6986, and affirm the decree dated May 2, 1939 as to said appeal, and assess all costs against Appellants.
- (d) In addition further motions that the court will retax the costs in each of said appeals, and charge all expense for printing the record in each of said appeals to the Appellants.

In support of said motions, suggestions herewith are filed.

Respectfully submitted,
WEIGHTSTILL WOODS,
Counsel for Court Trustee.

SUGGESTIONS BY THE COURT TRUSTEE IN SUPPORT OF MOTIONS TO DISMISS APPEALS AND MOTIONS TO RETAX COSTS.

1. On September 16, 1939 and November 8, 1939, the Court Trustee made motions for dismissal of appeals 6986 and 7060 in this court. Both motions were denied. Before that on June 17, 1939, the Court Trustee filed in this Circuit Court of Appeals, his answer and objections to petition for leave to appeal. Those objections were overruled and appeal granted by this court on June 22, 1939 as cause 6986. Opposing counsel relied principally upon the Dickinson case, (104 Fed. (2d) 771), which was then a recent Opinion by this Circuit Court of Appeals.

2. Later these and other Granada appeals were argued and submitted on February 23, 1940. Thereafter, on March 11, 1940, the Supreme Court at Washington sustained the Dickinson case, and wrote an Opinion which appears at 309 U. S. ; 60 S. C. R. 395, in the latest advance sheets.

3. The full effect of the decision by this court and the Supreme Court, in *Shulman v. Wilson-Sheridan Hotel Company*, (86 Fed. (2d) 898, 301 U. S. 172), did not appear in relation to section 250 of the Bankruptcy Act, until the Opinions by this Circuit and the Supreme Court in that case, were compared with the ruling made by the Circuit Court of Appeals for the Second Circuit, in *re Prudence Bonds Corporation*, 111 Fed. (2d) 37, and the ruling made by the Supreme Court in the Dickinson case. These latter two Opinions are just now available in the current advance sheets.

4. Appeal 7060 depends upon a notice of appeal filed in District Court on June 1, 1939. Appeal 6986 is based

upon a petition for leave filed in Seventh Circuit Court of Appeals on June 12, 1939. These appeals compete with each other. Both are taken by the same parties; for the same purposes, and from one decree dated May 2, 1939.

5. The appeal by notice on June 1, 1939, was an election to proceed in that manner, under Section 25 of the Bankruptcy Act. That notice of appeal by City National and associates was never withdrawn but stands. That notice precludes the competing appeal by petition to this Circuit Court of Appeals on June 12, 1939, based upon Section 250 of the Bankruptcy Act. The Court Trustee urges that it is a violation of statute and unjust, to assault Appellees with multiple and inconsistent appeals about the same matter. Each of those statutes (Sections 25 and 250) covers the field exclusively. To use both at one time is an act of legislation. It is siamese twin practice. It would be blunderbus procedure.

6. Appellants chose to file the transcript of record in appeal 7060, under the notice of appeal (Section 25) filed in the District Court. August 19, 1939 was the date the transcript of record was so filed. This fact is established by the court docket, and is confirmed by recitals by Appellants in support of numerous motions (page 3 of suggestions and motion by Appellants in 6986 filed September 8, 1939, is one example), and by statements in the orders of this Court of Appeals.

7. The Supreme Court General Orders in Bankruptcy in effect since February 13, 1939, "No. 36 Appeals" provides:

"Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including the rules of civil procedure for the District Court of the United States."

The present Circuit Court of Appeals rules were effective November 10, 1939. That was after these Granada

events. But the rules are merely declaratory. The courts and the profession had known for a year that the Chandler Act and the rules of Federal Rules of Civil Procedure, which were effective for all purposes in September, 1938, had profoundly affected and made obsolete, prior rules and practice in the District Courts and the Circuit Court of Appeals. The Seventh Circuit Court of Appeals had so announced on October 4, 1938, as follows:

"RULE 42. (a) The existing Rules of the United States Circuit Court of Appeals for the Seventh Circuit, as amended November 17, 1937, are hereby amended so as to harmonize with the 'Rules of Civil Procedure,' adopted by the Supreme Court of the United States pursuant to the Act of Congress of June 19, 1934 (c. 651) and which became effective September 16, 1938.

"(b) Any rule of this Circuit Court of Appeals which is covered by the 'Rules of Civil Procedure' is deemed to be modified or superseded by said 'Rules of Civil Procedure' and the applicable portions of said 'Rules of Civil Procedure' govern."

It is plain that neither old Rule 14 nor new Rule 31 by Seventh Circuit Court of Appeals, could possibly be applicable to the situation at bar, where three appeals were taken from the same order May 2, 1939; two by notice on June 1st and 10th and one by petition for leave on June 12, 1939. Circuit rule 10 provides:

"The record on appeal shall be prepared and the transcript thereof filed in this court, as provided in Rules 75 and 76 of the Federal Rules of Civil Procedure."

(8) Rule 7 by the Seventh Circuit Court of Appeals provides:

"The rules of the Supreme Court of the United States and the Federal Rules of Civil Procedure, whenever applicable, shall be followed."

Said Rules of Civil Procedure provide:

"RULE 73 (g). DOCKETING AND RECORD ON APPEAL. The record on appeal as provided for in Rules 75 and

7

76 shall be filed with the appellate court and the action there docketed within 40 days from the date of the notice of appeal; except that, when more than one appeal is taken from the same judgment to the same appellate court, the district court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of the first notice of appeal. In all cases the district court in its discretion and with or without motion or notice may extend the time for filing the record on appeal and docketing the action, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order; but the district court shall not extend the time to a day more than 90 days from the date of the first notice of appeal."

Said 40 days expired July 11, 1939. Appellants did not until July 19, 1940 ask the Court of Appeals, and they never asked the District Court, to enlarge the time for filing the record in this appeal by leave. Without the record being filed in the Court of Appeals on or before July 11, 1939, that court after that date had no jurisdiction for appeal 6986. Appeals 7060 and 7061 by notice June 1, and June 10, 1939, were not filed in Seventh Circuit Court of Appeals until August 19, 1939.

9. In 6986 Appellants filed only a short record consisting of decree and four items on July 19, 1939. That was filed without leave of court, without notice to anyone, and was prepared on a special short praecipe that was never served on anyone.

10. Two days later Appellants secured an order from the Circuit Court of Appeals on July 21, 1939 for leave to file a complete record in 6986 on or before September 16, 1939. To obtain that order, Appellants' counsel stated in support of their motion filed July 20, 1939 these words in writing:

"8. That the complete record, unless this motion is granted in this appeal (No. 6986) must be filed with the Clerk of this Court on or prior to July 22, 1939."

It is submitted that statement was untrue. The time had expired. Jurisdiction was gone. The court was misled.

11. Appellants abandoned and did not comply with that order of July 21, 1939 obtained in that manner. That order was void because the time for filing the record, had expired before the petition by Appellants to enlarge the time was served or filed; and was void because contrary to 73g of the rules of civil procedure which vests the exclusive power in the District Court to enlarge the time where more than one appeal is taken; and was void because the District Court was never asked to enlarge the time as to appeal 6986. Appeals 6986, 7060 and 7061 are expressly all from one order, May 2, 1939. Appellees say that such status leaves appeal 6986 without any supporting record.

12. Appellants sought to remedy that situation by their motion on September 8, 1939, to consolidate the appeals 6986 and 7060. Over the objection of the Court Trustee, Your Honors granted that motion and ordered on October 4, 1939:

“(b) That the transcript of record now filed with the Clerk of this Court in cause 6986 and the transcript of record now filed with the Clerk of this Court in the above entitled cause number 7060, be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated.”

13. Because this Court of Appeals had lost jurisdiction of appeal 6986 on July 11, 1939, by failure of Appellants to file the record, and because appeal 7060 was not docketed until August 19, 1939, and also because appeal 7060 fails for want of jurisdiction under the ruling of this Court and the Supreme Court in the Shulman and Dickinson cases; the order for consolidation also fails and should be vacated. It is void for the additional reason that the Court of Appeals having lost jurisdiction of appeal 6986 by failure of Appellants to file record in time, could not regain or revive that vanished power. *West v. Irwin*, 54 F. 419, C. C.

A. 7. The order was void also because it was applied for more than 90 days after June 1, 1939, when the first appeal was taken from decree of May 2, 1939. That overall time limitation is set by rule 73 (g) quoted above at paragraph 8.

14. It is submitted that the items for which Appellants in 6986 and 7060 seek relief, are of the same character as the items in the Prudence Bonds case. There appeals, like unto these at bar, were dismissed in reliance upon and in conformity to the ruling by the Supreme Court cases, *re Dickinson* and *re Shulman*. Section 250 of the Bankruptcy Act covers "allowances for compensation and reimbursement." That is all that Appellants seek in appeals 6986 and 7060. Appellants so admit by their answer (p. 12) filed herein November 16, 1939. That matter is *res judicata*. Your Honors so ruled when you dismissed their appeal 6744 in this court (104 Fed. (2d) 970 at 972). Certiorari was denied at Washington on November 6, 1939 as cause No. 469; 308 U. S.

15. In that Granada appeal 6744 your Honors ruled at page 972:

"It would seem, on general principles, that neither the Bank Trustee, nor the Committee, (both were Appellants in that appeal and the present appeals) had any interest in the proceedings after the plan of reorganization, approved by the court, had been consummated, with the exception of the former's claim No. 9, which we shall assume was pending at the time of the entry of the order appealed from. The deed of trust from which the former received its authority, and the bonds deposited with the latter and from which it received its authority, were as heretofore recited, cancelled and delivered to the reorganized company and thus the basis upon which both Appellants participated in the reorganization proceedings were destroyed. * * *

"The motion by Appellee (the Court Trustee in that appeal and likewise in the present appeals) to dismiss the appeal for the want of jurisdiction, has

heretofore been denied, but the motion being renewed, there is no doubt of our authority, as well as our duty to reconsider it. The principal contention made by Appellee in support of such motion is that neither of the Appellants is such a party to the proceeding below as to have any right or authority to appeal from the order in question. After giving the situation careful study, we come to the conclusion that Appellees' position must be sustained and that our order heretofore entered denying the motion to dismiss, was improvident."

16. It follows that Appellants are out of court as to both their appeals 6986 and 7060.

APPEALS BY WRONG MANNER WILL BE DISMISSED, BECAUSE THEY DO NOT CONFER ANY JURISDICTION.

In Re Prudence Bonds Corporation, 111 Fed. (2d) 371

In Re Dickinson, 309 U. S. _____, 60 S. C. R. 395.

Union Trust Company of Maryland v. Townsend, 101 Fed. (2d) 903 at 914.

Wayne U. G. Co. v. Owens I. G. Co., C. C. A. 4, 83 Fed. (2d) 98, 84 Fed. (2d) 965.

3 Ohlinger Federal Practice, 949, 953, 956.

Finletter Reorganizations, page 611.

Bender v. Davis, 365 Ill. 389.

Francke v. Eadie, 301 Ill. App. 254, 259.

AN ORDER EXTENDING THE TIME FOR FILING THE TRANSCRIPT OF RECORD ON APPEAL, MADE AFTER THE TIME HAS EXPIRED IS INEFFECTIVE AND VOID AND THE APPEAL MUST BE DISMISSED.

West v. Irwin, 54 F. 419 (C. C. A. 7).

Illinois Digest (West), App & Err. #624.

17. After a careful view of the entire record the Court Trustee deems it is his duty again to direct the atten-

tion of this court to the status of these appeals, in the light of the Supreme Court Opinion in the *Dickinson* case, 309 U. S. _____, as applied in the *Prudence Bonds* case (111 Fed. (2d) 37), and to ask that the Opinion by this court be recalled and that each of the appeals 6986 and 7060 be dismissed for want of jurisdiction at any time, with costs against appellants.

SUGGESTIONS AS TO COSTS.

18. In support of additional motions to retax the costs in appeals 6986 and 7060, the Court Trustee respectfully refers to the language of Section 250 of the Bankruptcy Act, which requires that in this court such appeals "shall be summarily heard upon the original papers." It is submitted that the inevitable effect of that language is to dispense with all need for printing the record of such appeals. By the statute the parties are excused from such printing costs.

19. It follows that where Appellants as in this case apply to court for leave to print certain portions of the record, and the order (October 4, 1939) is entered to that effect on their motion as was done in these appeals, without the consent or the approval of the Appellees, there is no power for the court to charge that expense against the Appellees. The Court Trustee opposed the motion for that order (paragraph 11 of reply by Court Trustee filed September 26, 1939, and paragraph J of suggestions to motion filed November 8, 1939, in appeal 6986; and motion by Court Trustee filed in 7060 on November 8, 1939). These objections by the Court Trustee were overruled.

20. The printing was the voluntary *ex parte* action of the Appellants. To assess such items as costs against the Appellees, would defeat the purpose of Section 250

of the Bankruptcy Act; and would accomplish by judicial act, a repeal of the positive direction and command of Congress. When the court rules that section 250 is an exception excluding section 25, it rules also that section 250 is an exception excluding the costs act. This is a statutory court. The will of Congress controls. Such appeals "shall be summarily heard upon the original papers."

(21) By diligent and personal examination of the court dockets and court records, made this week by the Court Trustee, the situation mentioned above at Paragraph 10 is now disclosed. The motion by Appellants on July 20, 1939, for an order to enlarge the time for filing a complete record, was a camouflage motion. Whatever was the intention of counsel for Appellants, they made no effort to comply with the order so obtained. Whatever their purpose was, the effect was to mislead the court and other counsel, by concealing the fact that jurisdiction had vanished on July 11, 1939. By that situation a vast amount of labor has been placed upon all parties in the case. These events are additional weighty reasons why the courts should tax all costs in these appeals against the Appellants.

22. Inasmuch as the Court Trustee advanced the money for printing the record that was printed in his appeal 7061, the Court cannot justify charging to the Court Trustee any of the expense of the record in 7060 or 6086, by carry over to 7061. The court expressly denied and refused consolidation with 7061 by its order November 27, 1939. Your refusal to consolidate was in accord with Section 250 of the Bankruptcy Act, which treats the subject matter of appeal 6986 "independently of other appeals in the same proceeding."

23. WHEREFORE the Court Trustee respectfully asks that

the court vacate all orders against the Appellees, withdraw the Opinion, and dismiss appeal 6986 and appeal 7060 for want of jurisdiction and/or affirm the decree of May 2, 1939 as to said appeals 6986; and assess all costs against the Appellants in each appeal.

24. By independent motions the Court Trustee asks that the court retax the costs for printing the record in appeals 6986 and 7060 against the Appellants pursuant to Section 250 of the Bankruptcy Act.

25. The Court Trustee respectfully mentions again that the equities are not with the Appellants. When they omitted the language now quoted:

"That as of September 30, 1936, the said cross-complainant (City National) *represents* it has on hand a balance of \$1,608.56, which sum should be applied on the indebtedness found due in this decree in the above-mentioned order of preference and priority. * * *

"The Court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein."

from the printed summary of the Superior Court decree at page 515 Volume Two of the Printed Record, and failed to disclose otherwise to the Court that the Superior Court decree had not disposed of their claim, they caused this court to believe, and to state in its Opinion that that decree was *res judicata* when the contrary is the record fact.

Respectfully submitted,

WEIGHTSTILL WOODS,

Court Trustee.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

WEIGHTSTILL Woods being first duly sworn, says that he is the Court Trustee in this cause; that he has personally and diligently examined the court dockets and records in these appeals; that he has read and considered the foregoing motions and foregoing suggestions; and says that the facts set forth therein are true, to the best of his knowledge and belief.

.....
Subscribed and sworn to before me this June 29, 1940.

*Notary Public, Cook County,
Illinois.*

Endorsed: Filed June 22, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the twenty-seventh day of June, there was filed in the office of the Clerk of this Court, in causes Nos. 6896 and 7060, an answer of appellants to the renew motions to dismiss appeals, etc., which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

October Term, 1939, April Session, 1940.

In the Matter of
Granada Apartments, Inc.,
a corporation,
Debtor. } Appeals from the District
Appeals 6986 and 7060. } Court of the United
States for the Northern
District of Illinois, Eastern
Division.

ANSWER OF APPELLANTS TO THE RENEWED
MOTIONS OF WEIGHTSTILL WOODS, APPEL-
LEE, TO DISMISS THE ABOVE APPEALS, ETC.

The Court Trustee's motion to dismiss appeal 7060 (the appeal by right) is predicated on the proposition that the appeal in this case involved only the question of fee allowances, and that, since affirmance of the Dickinson case, appeals from fee allowances can only be taken by leave; and also on the further proposition that, even if questions other than fee allowances were involved so that an appeal by right was necessary, it was not perfected within the time or in the manner provided by the law and the rules then in effect.

The Court Trustee's motion to dismiss appeal 6986 (the appeal by leave) is based on the proposition that the rules of this court then in effect did not govern the mode or method of taking an appeal by leave but that such an appeal was governed by the Rules of Civil Procedure and that the appeal was not perfected within the time or the manner provided by the latter rules.

This is the third time that the Court Trustee has presented motions to dismiss these appeals on substantially the same grounds. His original motions to dismiss, as well as his renewed motions for that purpose, were thoroughly answered and discussed, and each time were denied by this court.

We are now compelled, however, for the third time to answer.

I.

It Was Necessary in This Case to Appeal Both by Leave and by Right.

Both appeals were taken from a decree entered May 2, 1939 and from the findings of fact which by reference had been incorporated into that decree. The decree disposed of issues which arose on the final report and account of City National Bank and Trust Company of Chicago, as Indenture Trustee, on the claim of City National Bank and Trust Company of Chicago on its own behalf, on the petitions for fees and expenses of administration filed by the Committee and its counsel, the objections of the Court Trustee to all of the foregoing, and upon the counterclaim of the Court Trustee seeking to surcharge the Indenture Trustee with substantial sums for alleged wrongful acts and omissions in the management and operation of the mortgaged premises.

It is thus apparent that while the question of fee allowances is involved in the appeal there are many more vital questions involved which have nothing to do with fee allowances. As the question of fee allowances and expenses could only be raised by an appeal by leave and, as all of the other various matters from which an appeal was sought could only be raised by an appeal by right, it was necessary to take an appeal by right and also an appeal by leave.

The fact that the appeal by leave raises other questions in addition to those involving fee allowances is not grounds for dismissal of that appeal, nor is the fact that the appeal by right includes the question of fee allowances ground for dismissal of that appeal, since there were questions left in each appeal for review which could be reviewed only by appeal taken in that manner. There is, therefore, no basis for the contention that by appealing by one method we were estopped to appeal by the other.

We do not elaborate on the issues involved to demonstrate that far more than the mere question of fee allowances was presented for review, for at this stage the court is just as familiar with the facts as we are.

II.

Both the Appeal By Right and By Leave Were Perfected in the Manner and Within the Time Provided By Applicable Law and Rules of Court.

A. The appeal by right—

We admit, as the Court Trustee contends, that the appeal by right is governed by the Rules of Civil Procedure. The court is familiar with the requirements of Rules of Civil Procedure 73 and 75 relating to appeals.

We filed our notice of appeal June 1, 1939, or within thirty days of the date of the entry of the decree appealed from. Accordingly, under Rule 73(g), we were required within forty days of June 1, 1939 to file the record in this court unless the District Court granted further time on motion made within the forty day period.

The claim of the Court Trustee is that the record not having been filed until August 19, 1939, which was more than forty days after the filing of the notice of appeal, there was no compliance with the rule and accordingly the appeal was not perfected.

It is true that on August 19, 1939 more than forty days had elapsed, but as the Court Trustee well knows, as is shown by his former motions, the time for filing had been extended by the District Court on July 7, 1939 and the record was in fact filed within the extended time. See the renewal of counter motion to dismiss made by the Court Trustee in appeal 6986, dated November 8, 1939, in paragraph 3 of which he says:

“On July 7, 1939, appellant secured an order in District Court extending time until August 19, 1939 for docketing said case on appeal; and within said time did so docket said appeal in said Court of Appeals as Case No. 7060.”

See also original transcript of record from the Clerk of the District Court, pages 477-478, at which appear our motion for enlargement of time and Judge Barnes' order of July 7, 1939 enlarging the time to August 19, 1939.

It is thus manifest that the record on the appeal by right was filed strictly in accordance with the requirements of the Rules of Civil Procedure.

B. The appeal by leave—

While it is true, as stated by the Court Trustee, that the Rules of Civil Procedure superseded all rules of this court which were conflicting, the fact remains that the Rules of Civil Procedure relate only to appeals by right and are entirely silent as to appeals to be taken by leave. An examination of Rule 73 of the Rules of Civil Procedure confirms this assertion.

This court recognizes that the Rules of Civil Procedure make no provision for method of appeal where the appeal is taken by leave, for in revising and amending its rules to conform to the Rules of Civil Procedure by way of rules effective November 10, 1939 and still in effect the method of taking an appeal by leave is prescribed by Rule 31 and is quite different than the rules governing appeals by right, as set forth in the Rules of Civil Procedure, and not substantially different than old Rule 13.

It follows that the procedure was controlled by the rules of the Circuit Court of Appeals in effect at the time the appeal by leave was taken and allowed, which rules remained in effect until November 10, 1939, when the present rules of this court became effective.

What then were those rules, and what did they provide? Rule 13, Section 1, provided among other things that the transcript should be filed with the Clerk of the Court of Appeals on or before the return day specified in the citation unless the time for filing was enlarged by a judge of the District Court or by the Court of Appeals or some judge thereof. Section 3 of Rule 13 provided that the citation must be returnable within thirty days from the date on which the appeal was allowed—which it was in this case. On June 12, 1939, we petitioned this court for leave to appeal, and on June 22, 1939 leave was allowed and citation issued returnable July 22, 1939. Accordingly, the record was due in this court July 22, 1939. But on July 19, 1939, a short record having been filed, we made a motion that this court enlarge the time for the filing of the full record, which was allowed on July 21, 1939, and the time extended to September 16, 1939. It is true, as stated in paragraph 10 of the Court Trustee's motion, that we did represent in connection with this motion for extension that

the complete record was required to be filed on or prior to July 22, 1939. That representation was and is true and accurate.

In view of the facts above stated, what does the Court Trustee mean and what basis has he for the statements made in paragraph 21 of his present motion, including the statement that the effect of our representation was to mislead the court and to conceal the fact that jurisdiction had vanished on July 11, 1939?

Before the expiration of the time for the filing of the full record so allowed by order of this court entered July 21, 1939, we filed the complete record from the District Court clerk's office with the clerk of this court on August 19, 1939 in appeal 7060, as noted under Point II-A above. That having been done, we did not wait until September 16, 1939 in appeal 6986 to file one and the same record as had been filed in 7060, but on September 8, 1939 we moved in each case that the two appeals be consolidated and that the record filed in appeal 7060, together with the short record theretofore filed in 6986, stand as the record in 6986. If this motion was granted there would be no need to file any further record in 6986 by September 16, 1939, or any other time.

Pursuant to that motion an order was entered by this court on October 4, 1939 consolidating the two appeals and providing, among other things, "that the transcript of record (the short record) then on file in cause number 6986 and the transcript of record then on file in cause number 7060 be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated." (printed record 832.)

We thus complied with the requirements of the applicable rules of this court relating to appeals by leave.

Even if by any possibility the Rules of Civil Procedure rather than the then existing rules of this court controlled appeals taken by leave, the Court Trustee's contention that appeal 6986 should be dismissed because the record was not filed within the time fixed by the Rules of Civil Procedure would be without merit.

Prior to the adoption by this court of its present rules effective November 10, 1939, there was in effect Rule 14, which required appellants to file the transcript with the clerk of this court on or before return day. If the appellants failed to do so, the appellee could have the cause docketed and dismissed.

The present Rule 11, as adjusted to conform to the Rules of Civil Procedure relating to appeals in general, provides that the appellant shall file the transcript of the record within forty days from the date of the notice of appeal, and in Section 2 it says that if the appellant fails so to do the appellee may have the appeal docketed and dismissed. Both of these rules are substantially the same as the rule of the United States Supreme Court as to appeals taken there.

Now it always has been, and still is, the law both in this circuit and in the United States Supreme Court that if the appellant does not get the cause docketed and the record filed within the time prescribed by rule, nevertheless, the appellee may not have the appeal dismissed unless he presents his motion before the case is docketed and the record filed.

Southern Pine Company v. Ward, 208 U. S. 126; *West Chicago St. R. Co. v. Ellsworth*, 77 Fed. Rep. 664 (C. C. A. 7);

Vogel v. Saunders, 92 Fed. Rep. (2d) 984 (C. C. A., D. C.).

The opinion of this court in *West Chicago St. R. Co. v. Ellsworth*, 77 Fed. Rep. 664 (C. C. A. 7), effectively explains and distinguishes the case of *West v. Irwin*, 54 Fed. 419, cited by the Court Trustee at page 10 of his motion.

The Court Trustee's first motion for dismissal of appeal 6986 was made September 16, 1939. But at that time our motion of September 8, 1939 to consolidate 6986 with 7060 and to have the record in 7060 (filed August 19, 1939), together with the short record on file in 6986, stand as the record in the consolidated causes was pending and was thereafter allowed. Hence the Trustee's motion to dismiss came too late.

It follows that even if the Rules of Civil Procedure have anything to do with the appeals taken by leave, nevertheless the Court Trustee's motion to dismiss for want of record within the time prescribed by those rules could not be granted.

III.

The Court Was Correct in Taxing the Costs Against the Court Trustee.

The Court Trustee's suggestion that all costs in both appeals should be taxed against appellants is predicated in the first instance on his assumption that the appeals were not perfected within the time and in the manner provided by the applicable statutes and rules and should therefore be dismissed. But as the fact is that both appeals were necessarily taken and were properly perfected, that claim of the Court Trustee for taxing costs against us is without basis.

The Court Trustee further suggests that the printing costs should be taxed against appellants because Section 250 of the Bankruptcy Act provides that appeals in fee allowances shall be summarily heard upon the original papers and that in appeal 6986 the record was printed. But it was of course necessary in the appeal by right under 7060 to have the record printed and, as we have heretofore pointed out, the two appeals were consolidated and only one printed record was filed as the printed record in both cases.

We submit that it is obvious that Section 250 of the Bankruptcy Act, which provides that appeals from fee allowances shall be heard summarily upon the original papers, is applicable only when the sole appeal taken is an appeal by leave of the Circuit Court of Appeals from fee allowances and is not applicable where an appeal is also taken from the decree in respect to matters other than fee allowances in which a printed record is required.

We submit, therefore, that the Trustee's suggestions as to re-taxation of costs are without merit.

IV.

The Circuit Court of Appeals Has Lost Jurisdiction of the Causes.

We have answered the Court Trustee's motions to dismiss appeals 7060 and 6986 on the merits. We respectfully suggest, however, that as the Court Trustee's petition for rehearing has been denied this court has lost jurisdiction of the causes and is therefore without jurisdiction in this proceeding to entertain the Court Trustee's motion.

Respectfully submitted,

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Attorneys for Appellants-Respondents.

Endorsed: Filed June 27, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the third day of July, 1940, the following further proceedings were had and entered of record, to-wit:

Wednesday, July 3, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

In the Matter of
Granada Apartments, Inc.,
Debtor.

City National Bank and Trust
Company of Chicago, etc., *et al.*,
Appellants,

6986, 7060 *vs.*

Weightstill Woods, etc., *et al.*,
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

It is ordered by the Court that the motions to dismiss appeals for want of jurisdiction and motion to retax costs filed herein by Weightstill Woods, Court Trustee, be, and the same are hereby, denied.

And afterwards, to-wit: On the fifteenth day of July, 1940, there was filed in the office of the Clerk of this Court, a praecipe for record, which said praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

In the Matter of
Granada Apartments, Inc.,
a corporation,

Debtor.

Weightstill Woods, Court Trustee,
Appellant.
vs.
City National Bank and Trust Co.
of Chicago, and others,
Appellees.

No. 7060 and 6986.

To: Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals,
1212 Lake Shore Drive, Chicago, Illinois.

Pursuant to applicable rules of the Supreme Court, please prepare and certify the usual printed record, and a sufficient number of printed copies, for review of these appeals on petition for certiorari, to the Supreme Court at Washington at the October term 1940.

Pursuant to Supreme Court rule 38(b), so far as they extend you will please use copies of the printed record, which you prepared for City National, Bondholders Committee and their counsel, and which you filed November 15, 1939 in these appeals.

You may omit motions, suggestions and orders, which pertain only to time for filing of briefs. You will also not print the material mentioned by order of October 4, 1939, the printing of which was excused by that order. Your attention is directed to the fact that the Exhibits to petition for appeal filed June 12, 1939, duplicate the documents printed at pages 111-139, 165-170, 761-793 and 796-813 of the record heretofore printed; and to the fact that some of the documents in the short record which was filed July 19,

1939, in appeal 6986, are a similar duplication. A reference to proper pages will save any need to reprint any duplicate items. Please include and print all other proceedings in these appeals in ~~your~~ court.

You are requested not to print, but to send to Washington as original Exhibits, the four volumes which were certified and approved by the District Court on December 30, 1937, and were sent to this court pursuant to special order by the District Court on June 14, 1939. Your authority for sending these documents as special Exhibits will be found in the order by Circuit Court of Appeals dated May 16, 1940; and Rule 10(4) by the Supreme Court.

Weightstill Woods,
Court Trustee.

Received a copy of foregoing Prae*cipe* July fifteenth,
A. D., 1940.

Defrees, Buckingham, Jones & Hoffman,
By Vincent O'Brien.

Endorsed: Filed July 15, 1940. Kenneth J. Carrick,
Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 841 to 1035, inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the praecipe filed on the fifteenth day of July, 1940, in the following entitled causes:

Causes Nos. 6986, 7060.

In the Matter of Granada Apartments, Inc., Debtor.

City National Bank and Trust Company of Chicago,
etc., *et al.*,

Appellants,

vs.

Weightstill Woods, Court Trustee, *et al.*,
Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 23rd day of July, A. D. 1940.

Kenneth J. Carrick,

(Seal)

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM,
1940

No. 281

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM,
1940

No. 282

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1137)